

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
PG&E CORPORATION AND PACIFIC) Chapter 11
GAS AND ELECTRIC COMPANY)
Debtor.) San Francisco, California
) Wednesday, April 24, 2019
) 9:30 AM
)

APPLICATION PURSUANT TO 11
U.S.C. SECTION 327(E) AND
FED. R. BANKR. P. 2014(A) AND
2016 FOR ORDER AUTHORIZING
THE DEBTORS TO RETAIN JENNER
& BLOCK LLP AS SPECIAL
CORPORATE DEFENSE COUNSEL
NUNC PRO TUNC TO THE PETITION
DATE [DKT. 911]

APPLICATION OF DEBTORS
PURSUANT TO 11 U.S.C. SECTION
327(A) AND FED. R. BANKR. P.
2014(A) AND 2016 FOR
AUTHORITY TO RETAIN AND
EMPLOY CRAVATH, SWAINE, &
MOORE LLP AS CORPORATE AND
LITIGATION COUNSEL FOR THE
DEBTORS EFFECTIVE AS OF THE
PETITION DATE [DKT. 1024]

APPLICATION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS FOR AUTHORITY TO
RETAIN AND EMPLOY EPIQ
CORPORATE RESTRUCTURING, LLC
AS INFORMATION AGENT FOR THE
COMMITTEE, NUNC PRO TUNC TO
FEBRUARY 15, 2019 [DKT. 1214]

APPLICATION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS PURSUANT TO 11
U.S.C. SECTIONS 328(A) AND
1103(A) AND FED. R. BANKR. P.
2014 AND 2016 FOR AUTHORITY

1 TO RETAIN AND EMPLOY MILBANK
2 LLP AS COUNSEL, EFFECTIVE AS
3 OF FEBRUARY 12, 2019 [DKT.
4 1208]

5 APPLICATION OF THE OFFICIAL
6 COMMITTEE OF UNSECURED
7 CREDITORS FOR ENTRY OF AN
8 ORDER PURSUANT TO 11 U.S.C.
9 SECTIONS 328(A) AND 1103 AND
10 FED. R. BANKR. P. 2014(A) FOR
11 AUTHORIZATION TO RETAIN AND
12 EMPLOY FTI CONSULTING, INC AS
13 FINANCIAL ADVISOR NUNC PRO
14 TUNC TO FEBRUARY 12, 2019
15 [DKT. 1212]

16 APPLICATION OF THE OFFICIAL
17 COMMITTEE OF UNSECURED
18 CREDITORS FOR AUTHORITY TO
19 RETAIN AND EMPLOY CENTERVIEW
20 PARTNERS LLC AS INVESTMENT
21 BANKER, EFFECTIVE AS OF
22 FEBRUARY 15, 2019 [DKT. 1213]

23 APPLICATION OF DEBTORS
24 PURSUANT TO 11 U.S.C. SECTION
25 327(E) AND FED. R. BANKR. P.
2014(A) AND 2016 FOR
AUTHORITY TO RETAIN AND
EMPLOY MUNGER, TOLLES & OLSON
LLP AS ATTORNEYS FOR CERTAIN
MATTERS FOR THE DEBTORS
EFFECTIVE AS OF THE PETITION
DATE [DKT. 1167]

APPLICATION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
PURSUANT TO 11 U.S.C. SECTION
1103 AND FED. R. BANKR. P.
2014 AND 5002 TO RETAIN AND
EMPLOY LINCOLN PARTNERS
ADVISORS LLC, AS A FINANCIAL
ADVISOR EFFECTIVE AS OF MARCH
1, 2019 [DKT. 1134]

MOTION OF DEBTORS PURSUANT TO
11 U.S.C. SECTION 365(A),
FED. R. BANKR. P. 6006, AND

B.L.R. 6006-1 FOR AN ORDER
APPROVING THE UTILITY'S
ASSUMPTION OF CERTAIN
AGREEMENTS WITH QUANTA ENERGY
SERVICES, LLC [DKT. 1218]

MOTION OF OFFICIAL COMMITTEE
OF UNSECURED CREDITORS FOR
ENTRY OF AN ORDER (I)
CLARIFYING CERTAIN BANKRUPTCY
CODE REQUIREMENTS AND (II)
APPROVING PROTOCOL FOR
PROVIDING ACCESS TO
INFORMATION TO UNSECURED
CREDITORS, NUNC PRO TUNC TO
FEBRUARY 12, 2019 [DKT. 1215]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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24 Proceedings recorded by electronic sound recording;
25 transcript provided by transcription service.

1 SAN FRANCISCO, CALIFORNIA, WEDNESDAY, APRIL 24, 2019, 9:32 AM

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3 (Call to order of the Court.)

4 THE CLERK: Matter of PG&E Corporation.

5 THE COURT: So on today's calendar, we've taken care
6 of most everything except for some various retentions of
7 professionals and related motion by the creditors' committee to
8 approve a -- or clarify procedures and adopting a protocol. Is
9 there anyone in court or on the phone that expects to be heard
10 on any other matter? There was the debtor's motion to assume
11 the contracts with Quanta; I believe it'd been resolved.
12 Anyone want to be heard on any of those?

13 Okay. We'll just pass on all of them and leave just
14 what's left that I said.

15 I've already issued, as counsel will be aware of,
16 preliminary thoughts on a couple of things, and from my point
17 of view, I have no comments and no need to take any time for
18 the retention applications for Jenner & Block, Cravath, Swain &
19 Moore, Munger, Tolles & Olsen, and Milbank LLP. So unless
20 anyone wants to be heard, I'll pass on all four of those and
21 look forward to getting orders.

22 And again, if there's no -- want to be heard?

23 MR. DUNNE: Yes, Your Honor.

24 THE COURT: Which one?

25 MR. DUNNE: For the record, Your Honor, Dennis Dunne

1 from Milbank LLP.

2 THE COURT: You're not really going to argue against
3 your motion to --

4 MR. DUNNE: Not at all. I just wanted to -- not at
5 all. I just wanted to make one comment with respect to Your
6 Honor's informational comments with respect to all
7 professionals that hit the docket a couple of days ago --

8 THE COURT: Right.

9 MR. DUNNE: -- particularly with respect to
10 disinterestedness, and less so with respect to the rates.

11 We agree with Your Honor's comments. We're going to
12 amend the order accordingly, so there's no issue there.

13 THE COURT: Well, you understand the purpose? I just
14 don't want to be locked into a finding that turns out has to be
15 revisited because something went wrong. That's all. I mean,
16 that --

17 MR. DUNNE: Right, and we agree a hundred percent with
18 that.

19 THE COURT: Okay.

20 MR. DUNNE: And the only reason I'm raising it is to
21 say the opposite of that, which is let's assume the
22 representations we made to Your Honor, which we believe are
23 true, complete, and accurate today --

24 THE COURT: And so do I.

25 MR. DUNNE: -- and remain throughout the case to be

1 true, complete, and accurate, that -- and nobody has objected
2 to disinterestedness or are arguing that we represent an
3 adverse interest -- that that issue's closed unless what Your
4 Honor said happens, that somebody says it was either
5 incomplete, facts have changed, or there was some kind of
6 mistake or material misrepresentation.

7 What can't happen is somebody a year from now could
8 say nothing has changed, but we're coming in and collaterally
9 attacking and challenging what should have been raised today
10 which is, if this is true and complete, we've closed the
11 record.

12 THE COURT: Well, what would happen -- I hate
13 hypotheticals because I use them all the time, but what would
14 happen if they're just an innocent error? What if, unbeknownst
15 to you -- that you forgot that you had ten shares of stock of
16 PG&E corporation.

17 MR. DUNNE: I agree with you; they could raise that,
18 Your Honor.

19 THE COURT: You'd be not disinterestedness, and your
20 firm, right?

21 MR. DUNNE: They could raise that.

22 THE COURT: They could raise that, and it's not res
23 judicata; it's not anything. It's just -- it is what it is,
24 and if you say it was an error and blah, blah, blah, we'll
25 worry about it, deal with it. Right?

1 MR. DUNNE: Right.

2 THE COURT: Okay.

3 MR. DUNNE: But all I'm saying is let's assume that
4 doesn't happen --

5 THE COURT: Um-hum.

6 MR. DUNNE: -- but they say on page 3 of what you
7 filed on the Tom Kreller affidavit lists a representation of
8 some party who's a creditor, we think that that renders you not
9 disinterested. That needed to be raised today because
10 nothing --

11 THE COURT: Well, yeah, I mean, I don't disagree with
12 that.

13 MR. DUNNE: That's all I'm saying, Your Honor.

14 THE COURT: I mean, that's just a matter of -- but
15 that being said, if I were a pro se who didn't understand it,
16 et cetera, let's not worry about it.

17 MR. DUNNE: That's fine.

18 THE COURT: I'm not worried about it, and I presume --

19 MR. DUNNE: I'm not worried about that, Your Honor.
20 Just clarifying it.

21 THE COURT: Okay.

22 MR. DUNNE: And the same with the res; we'll take it
23 out --

24 THE COURT: Again, I'm not -- I don't know you that
25 well, but a number of lawyers from your firm. I don't change

1 the rules on people, and I'm not going to talk to you six
2 months from now and say, I thought your rate was a hundred
3 dollars an hour; what's the story. I mean, on the other hand,
4 I'm not going to have some magic thing that just automatically
5 rubber stamps it. We just take it in context.

6 MR. DUNNE: I agree.

7 THE COURT: Okay.

8 MR. DUNNE: I agree.

9 THE COURT: Good. So those four will be resolved.
10 And then if -- as long as you're -- Mr. Dunne, as long as
11 you're here, do you want to talk about the --

12 MR. KAROTKIN: I'm sorry, Your Honor. Could I just
13 interrupt?

14 THE COURT: Oh, yes, Mr. Karotkin.

15 MR. KAROTKIN: Just for the record, there was a letter
16 filed by Mr. McCann that was an overall objection I assume
17 you're overruling?

18 THE COURT: I wasn't going to act on that unless Mr.
19 McCann is on the phone or in court.

20 MR. KAROTKIN: Okay, well, I assume that would be
21 overruled and --

22 THE COURT: Well, let me -- is Mr. McCann on the
23 phone?

24 Well, yes, it will be either overruled formally or
25 just disregarded. I mean, Mr. Kalotkin -- Karotkin, sorry, as

1 I'm sure you know probably from your experience in other cases,
2 courts get all sorts of free advice. I get letters. I get --
3 did you see the letter that he sent? He told me he was viewing
4 the sharks in the gulf off Florida. And if he wants to come
5 and be heard, fine, but I'm just not going to act on it
6 otherwise, so.

7 And besides, I would have implicitly overruled it by
8 authorizing the employment of the four firms that he --

9 MR. KAROTKIN: Thank you, sir.

10 THE COURT: -- four of the firms that he complained
11 about.

12 Do you want to go to the clarification motion for
13 which the objection has been withdrawn but then another party
14 has joined it. Do you want to take that out of order?

15 MR. DUNNE: Sure.

16 THE COURT: I mean, there's no real order, but
17 obviously, the concerns that I've expressed about the other
18 professionals, I presume somebody wants to be heard on that
19 subject.

20 So are you going -- you're in charge of that one?

21 MR. DUNNE: Yes.

22 MR. LEBLANC: Yes, Your Honor. Andrew Leblanc of
23 Milbank on behalf of the committee.

24 Your Honor, there was one objection that was received
25 and that was withdrawn --

1 THE COURT: Yeah.

2 MR. LEBLANC: -- by SLF.

3 THE COURT: But then it was joined by Mr. Gottfried.

4 MR. LEBLANC: Yes, Your Honor, by certain camp fire
5 victims joined in that objection.

6 THE COURT: Right.

7 MR. LEBLANC: It doesn't appear on the agenda, as far
8 as I can tell, the joinder doesn't, but I think the withdrawal
9 of that objection means the joinder -- there's nothing now for
10 them to join.

11 THE COURT: Well, as a courtesy --

12 MR. LEBLANC: But I'm also happy to address it.

13 THE COURT: I see Mr. Gottfried's on the phone call
14 list.

15 Mr. Gottfried, are you on the call this morning?

16 MR. GOTTFRIED: Yes, thank you, Your Honor. This is
17 Michael Gottfried.

18 THE COURT: Okay.

19 MR. GOTTFRIED: Your Honor, to the extent that the --

20 THE COURT: The joinder was late.

21 MR. GOTTFRIED: To the extent that the opposition
22 was --

23 THE COURT: The joinder was late, so what do you want
24 to do about it? Are you withdrawing it?

25 MR. GOTTFRIED: I was going to suggest, Your Honor,

1 that as the opposition has been withdrawn, we will withdraw our
2 joinder, as well.

3 THE COURT: Okay.

4 So Mr. Leblanc, I have a question --

5 MR. LEBLANC: Yes, Your Honor.

6 THE COURT: -- really probably for you but as much for
7 the U.S. Trustee, and that is -- I mean, when the U.S. Trustee
8 used her or his discretion to appoint the second committee,
9 that was proper. But I didn't envision that we'd have two of
10 everything -- two for everything, which is partly why I've
11 raised the question of why do we need Epiq, and we'll come back
12 to Epiq in a minute.

13 MR. LEBLANC: Yes.

14 THE COURT: And so for here, I don't know whether I
15 should act on it or ask the U.S. Trustee to take a position or
16 not. But there's something unnecessarily duplicative about
17 having three different websites or four different databases for
18 the same information. And so as much as I think it's a great
19 idea to make sure that the constituents of the two committees
20 are fully informed, I don't know that we want two of
21 everything.

22 So do you have a thought --

23 MR. LEBLANC: Sure.

24 THE COURT: -- from the committee's point of view how
25 to do that efficiently?

1 MR. LEBLANC: We do. I mean, we certainly -- I know
2 the tort committee's 1102 motion has not yet been filed --

3 THE COURT: Right.

4 MR. LEBLANC: -- their similar clarification motion.
5 We've done this in multiple cases, and we think it's
6 appropriate. We're certainly happy to work with them both to
7 use Epiq, if they're amenable to that so that we don't have
8 another professional, and also to put the information that they
9 want -- we can have the same website. I don't think there'll
10 be an issue there.

11 There are certainly differences between our
12 committees, and there may be points in time where we don't
13 share a commonality of interest.

14 THE COURT: Well, of course; I understand that.

15 MR. LEBLANC: But as it relates to this, I think we
16 can certainly work with them. We weren't party to the
17 discussion between SLF and the tort committee that led to them
18 withdrawing that objection. We put in our reply why we thought
19 it wasn't well founded, and a big part of that was because they
20 have their fiduciary in the form of the tort committee. But
21 we're happy to address that with the tort committee to try to
22 see if we can reduce that duplication of effort.

23 I'll also address the Epiq motion when we get to that.

24 THE COURT: We'll come back to them in a minute.

25 Do you have a position, Ms. Villacorta, from the U.S.

1 Trustee's point of view? I mean, is this something you want to
2 be involved in?

3 MS. VILLACORTA: Well, Your Honor, I just want to note
4 for the record the opposition deadline has already expired, and
5 so unless counsel is okay with me making a comment, then --

6 THE COURT: Well, I'm okay with it because I'm asking.

7 MS. VILLACORTA: Okay, well --

8 MR. LEBLANC: I'm also okay with it, just to be -- I'm
9 okay with it, as well, Your Honor.

10 THE COURT: But it's not anti-Mr. Leblanc or his firm.

11 MS. VILLACORTA: Okay, no, so --

12 THE COURT: It has to do with case management and how
13 many times do we all know there are thousands of people
14 impacted by this case, and the more keeping them informed, the
15 better. I just don't want to do it for two for the price of
16 one -- or one for the price of two.

17 MS. VILLACORTA: And so if everyone's okay with it,
18 then the U.S. Trustee does share the same concerns. And so I
19 think the burden is on the applicant to show why two or more --

20 THE COURT: But are you in a position -- I know, I'm
21 not going to say off the record; what I meant is not in front
22 of me in court -- are you in a position to sit at a table with
23 the representatives of the two committees and see if there's a
24 common sense as to what is the right thing to do for the
25 benefit of so many people that are tracking this case?

1 MS. VILLACORTA: Well, I think it's up to the
2 applicant to show why they need two or more.

3 THE COURT: Well, you mean the tort committee?

4 MS. VILLACORTA: Right, the tort committee.

5 THE COURT: Well, that sounds like you're not amenable
6 to trying to see if there's a consensual way to make this
7 happen efficiently. So -- that's okay. I'm not going to order
8 you to do it. I'm going to take Mr. Leblanc's proposal and
9 invite him and his committee -- perhaps a committee
10 representative, as well, and same with the tort committee, to
11 do something that makes sense --

12 MR. LEBLANC: Yup.

13 THE COURT: -- that works. So.

14 MR. LEBLANC: And Your Honor, we're --

15 THE COURT: You want to be heard on that?

16 MR. ROSE: Yeah.

17 MR. LEBLANC: Oh.

18 MR. ROSE: Sorry, Your Honor. Jorian Rose from
19 BakerHostetler on behalf of the tort committee.

20 THE COURT: Yes.

21 MR. ROSE: We're happy to work with the unsecured
22 creditors' committee and see if we can arrange something that
23 is not duplicative and work with the U.S. Trustee's office, as
24 well, to see if we can get there.

25 THE COURT: Okay. I mean, look, just a couple of free

1 observations. I mean, I understand the notion of a FAQ page;
2 that's fine. And if someone who's a fire victim wants to know
3 when am I going to get paid, which is a perfectly normal
4 question, then maybe that's the kind of thing the tort
5 committee representatives will try to deal with it on some sort
6 of an informational basis, and maybe that's not something that
7 the regular committee -- the OCC would want to be involved
8 with.

9 On the other hand, if there's a common interest,
10 whether it's on the motion we had yesterday or if there's a
11 similar motion or something that affects both groups equally,
12 you two gentlemen and all the bankruptcy people in the room and
13 I know what the priority schemes are and how tort victims and
14 consensual creditors may fare unless there's some resolution.
15 But there are differences, of course. And I'm not second-
16 guessing the U.S. Trustee's position to appoint the second
17 committee, obviously. I just want some order to avoid, at
18 least already, as I counted in the Epiq context, perhaps three
19 websites or databases for the docket, at least.

20 Okay, so I'm going to go ahead and grant the official
21 creditors' committee's motion today because it's unopposed. I
22 did note, however, the very same law firm representing the
23 committee here represented the committee in the case that --
24 Revco where the judge followed a different procedure and
25 perhaps a more elaborate one. And I'm not going to speculate

1 on it. If this committee thinks that to do it this way is the
2 right way to do it, fine. If someone else later believes that
3 should be revisited and done some different way, we'll deal
4 with it some other different way. But you didn't follow the
5 Revco procedure.

6 MR. LEBLANC: Well, we didn't, Your Honor. We also
7 represented committees in Lehman Brothers, Takata, FES --

8 THE COURT: I know. I know.

9 MR. LEBLANC: -- and a number of other cases, and
10 those procedures, Revco was the first case that happened after
11 BAPCA --

12 THE COURT: I know that.

13 MR. LEBLANC: -- enacted 1102(3) (sic), the provision
14 that we're dealing with here. And so those evolved over time.
15 In Revco, we were writing on a blank slate.

16 THE COURT: Well, you cited it.

17 MR. LEBLANC: We did, and because it's --

18 THE COURT: And I read it.

19 MR. LEBLANC: -- it's one of the only interpretations
20 of what's required under 1102(c)(3).

21 THE COURT: I know, but it's --

22 MR. LEBLANC: But we've determined -- doing this in
23 many of these mega cases, we've determined that the monthly
24 reporting or the monthly almost sort of updates isn't useful to
25 creditors and isn't value added for creditors. So we --

1 THE COURT: No, I understand, and that's why I'm --

2 MR. LEBLANC: Yeah.

3 THE COURT: -- I'm not second-guessing it. On the
4 other hand, when Revco was decided, we didn't have social media
5 and internet and God knows how fast things move in this case.

6 MR. LEBLANC: Yeah.

7 THE COURT: Look, I'm going to leave that to you.
8 Let's move on, and I'll look forward to the (indiscernible) and
9 order that you want to do for that --

10 MR. LEBLANC: Yeah.

11 THE COURT: -- that motion because the objections are
12 all withdrawn.

13 MR. LEBLANC: Yeah, and I'll rise again when we deal
14 with the Epiq.

15 THE COURT: Well, go to Epiq now.

16 MR. LEBLANC: You want to do it -- okay, sure.

17 THE COURT: I mean, the other three are -- Epiq is
18 different.

19 MR. LEBLANC: Yes.

20 THE COURT: And as I say, my comments about Epiq were
21 not directed at Epiq --

22 MR. LEBLANC: Understood.

23 THE COURT: -- as a business.

24 MR. LEBLANC: Yup.

25 THE COURT: It's just Epiq as do we really need three

1 sets of dockets to track.

2 MR. LEBLANC: Yes, Your Honor. Let me address it.
3 The website that we would contemplate establishing here and
4 what we've done in other cases doesn't actually duplicate the
5 Prime Clerk website. It references the Prime Clerk website.

6 THE COURT: Well, are you going to link to the court
7 docket or the Prime -- the docket, at least?

8 MR. LEBLANC: Yeah, we'll link to both the docket and
9 to the Prime Clerk website which then contains the debtor's own
10 information. I will tell you, Your Honor, that from our
11 perspective, the primary purpose of the website is to provide
12 people a portal to interact with the committee --

13 THE COURT: Well, that's what I assumed.

14 MR. LEBLANC: -- and for the FAQs and for people to
15 ask questions and to identify who they can reach out to. And
16 the reason -- we had -- when we did this in Revco, when we
17 started back then, we didn't hire a third party to man that
18 website and to run it, the consequence of which is we had much
19 higher paid professionals having to deal with that. And what
20 we've concluded over time is that it's a far better use of
21 estate resources to have this done by Epiq who, you can see,
22 their rates are 25 dollars to 150 dollars an hours, that's the
23 range, whereas Milbank professionals are at significantly
24 higher rates than that.

25 THE COURT: Not a lot higher.

1 MR. LEBLANC: Depends on one's perspective, but --

2 THE COURT: You get what you pay for, right?

3 MR. LEBLANC: Exactly. Well, I -- the Epiq
4 representative's here in the courtroom, I'll say, Your Honor.

5 But Your Honor, so that's the reason. Because I do
6 think -- I'm trying to address the Court's concern about not
7 replicating another website.

8 THE COURT: No, I appreciate the explanation.

9 MR. LEBLANC: It's really designed to give people that
10 opportunity to interact. And then it allows Epiq -- so if a
11 question comes in -- if it came into us about where can I find
12 a particular docket entry, Epiq can just answer that and point
13 them to where it is --

14 THE COURT: Right.

15 MR. LEBLANC: -- at rates that are significantly lower
16 and --

17 THE COURT: No, of course.

18 MR. LEBLANC: -- most cost-effective.

19 THE COURT: Right, I mean --

20 MR. LEBLANC: Your Honor had asked a question about
21 the competitive bidding process.

22 THE COURT: Well, the statement was made, so --

23 MR. LEBLANC: No, and I'm happy to address it if Your
24 Honor would take representation from me --

25 THE COURT: Well --

1 MR. LEBLANC: -- in light of the absence of objection.
2 We did interview four different firms for the role. I won't
3 mention them, but they're the people that Your Honor would
4 typically see as a claims agent.

5 THE COURT: Um-hum.

6 MR. LEBLANC: Each of them came in with a proposal.
7 We negotiated with -- based upon the presentations, the
8 committee determined to engage with Epiq and negotiated their
9 hourly rates down by twenty percent from what was originally
10 proposed to make them the most cost-competitive and negotiated
11 the monthly hosting fee for the website down by fifty percent.
12 And to be clear, just the order of magnitude we're talking
13 about, we negotiated from 200 dollars a month to 100 dollars a
14 month.

15 THE COURT: Well, but as I stated in my paper, nobody
16 told me any budget. So if you told me it was -- the whole
17 thing was going to cost 5,000 dollars, that's one thing. If
18 you told me 500,000 that's another thing.

19 MR. LEBLANC: Right. And the best we can say with
20 respect to a budget, because I know Your Honor asked that
21 question, is the issue is that it really depends on the volume
22 of questions that come in to Epiq that they have to respond to
23 because they bill on an hourly basis. That's why we negotiated
24 our rates down.

25 In our experience in cases like this, and again, that

1 includes Takata where there was a mass tort situation there,
2 our experience is that in those instances, it's approximately
3 15,000 a month, just based on hourly rates. We don't
4 anticipate anything different here, with respect to that, but
5 it's hard to put a real budget on it because they're -- by
6 definition, they're reactive to what comes in: if a question
7 comes in and they have to then go find information; if they get
8 a thousand questions, they have to find that information or
9 pass that information along to us.

10 THE COURT: But what if one of those questions is like
11 when am I going to get paid? Then how -

12 MR. LEBLANC: Well, then they would pass that along to
13 either us or the tort committee --

14 THE COURT: Right.

15 MR. LEBLANC: -- to the appropriate legal professional
16 to deal with that question. But the good thing is that most of
17 the questions, in our experience, that come in through website
18 are questions that are more like what date is -- what's the bar
19 date, or what do I need to do by the bar date, and then they
20 can provide that information.

21 THE COURT: Wouldn't those go right on an FAQ right
22 off the bat?

23 MR. LEBLANC: They would, but obviously, people don't
24 always --

25 THE COURT: No, I understand.

1 MR. LEBLANC: -- go to the FAQs and --

2 THE COURT: Listen, anyone over twenty maybe doesn't
3 know how to do this at all, but most teenagers know how to do
4 this on their phones, right?

5 MR. LEBLANC: Right.

6 THE COURT: So I'm just trying to figure out where the
7 efficiencies are. So if you tell me that some of the basics
8 that we all know, whether it's a big case or little case,
9 claims bar date --

10 MR. LEBLANC: Yup.

11 THE COURT: -- hearing dates, et cetera, et cetera --

12 MR. LEBLANC: Right, that would go on the face of the
13 website.

14 THE COURT: Um-hum.

15 MR. LEBLANC: But if people still have questions --
16 where can I find this or where can I find the docket -- they
17 would respond to those questions, using their professionals at
18 their rates, which we think --

19 THE COURT: But this --

20 MR. LEBLANC: -- is advantageous.

21 THE COURT: -- this kind of circles back to the same
22 question from a fire victim as from a contract claimant.

23 MR. LEBLANC: Yeah.

24 THE COURT: Should be dealt with once --

25 MR. LEBLANC: And --

1 THE COURT: -- not twice.

2 MR. LEBLANC: And again, that's why, Your Honor, we
3 had a healthy meeting with the tort committee yesterday. We've
4 met with them and talked with them repeatedly throughout the
5 case, and we're happy to do so. We just didn't -- we filed our
6 motion. They had not yet, and -- but we're happy to talk to
7 them to see where we can gain efficiencies there.

8 THE COURT: Okay.

9 MR. LEBLANC: And then Your Honor had -- if you want
10 me to address the other questions --

11 THE COURT: Yeah, go ahead.

12 MR. LEBLANC: Your Honor had asked a question about
13 why should the debtors pay for errors by the committee. And
14 that's a reference to the engagement letter. Just to be clear,
15 it's -- Epiq is fine if Your Honor would like us to take that
16 provision out.

17 What we're trying to say there is if the client, which
18 is the committee, asks Epiq to do something, they're expecting
19 to get paid for that, even if the committee was mistaken in
20 asking them to do it. So if we ask them to send notice to a
21 broad list of people, and it should've only gone to a narrow
22 list of people but they've actually done the work, that's the
23 only intent of it.

24 And because I think it's otherwise clear, I think it
25 was Epiq had that in their form engagement letter. We didn't

1 have an issue with it. They're okay taking it out because the
2 understanding is they're getting paid for the work that we
3 direct them to do.

4 THE COURT: But what I was reading when I was reading
5 here is if Epiq -- excuse me. If Epiq makes a mistake, the
6 debtor pays. Now, again, Mr. Karotkin knows how to object, and
7 I don't imagine it's going to be seven-figures error. It
8 might --

9 MR. LEBLANC: Right.

10 THE COURT: -- be a three-figure error. But the point
11 is it just shouldn't --

12 MR. LEBLANC: It --

13 THE COURT: -- just shouldn't be that kind of --

14 MR. LEBLANC: Right. Your Honor, I think the -- it's
15 an issue with the defined terms, but I thought -- when I looked
16 at it yesterday, I thought it was clear is that if the client
17 makes a mistake and asks Epiq to do something that, ultimately,
18 they didn't need to do, Epiq still gets paid. It's not asking
19 for Epiq to get paid for a mistake that they made.

20 THE COURT: I might have misread it. So that's fine.
21 That's a good --

22 MR. LEBLANC: Okay.

23 THE COURT: -- clarification.

24 MR. LEBLANC: And then lastly, Your Honor, venue
25 selection for dispute resolution, other than this Court, is not

1 acceptable. Their venue selection is this Court, Section 11.3
2 of their engagement letter.

3 THE COURT: I read an awful lot of forms and
4 duplicates, and trying to catch up with --

5 MR. LEBLANC: Yeah.

6 THE COURT: -- all the different recitals --

7 MR. LEBLANC: Yeah.

8 THE COURT: -- we got it, so we're here.

9 MR. LEBLANC: And we don't think -- there's nothing in
10 the order that changes that. It is submission to this Court's
11 jurisdiction for any disputes.

12 THE COURT: Okay.

13 MR. LEBLANC: And only if this Court declines to
14 exercise jurisdiction or the reference is withdrawal would --
15 withdrawn would it go to a different Court.

16 THE COURT: So I want to go back to something else,
17 though, with, again, focus -- let's forget -- not forget, but
18 let's not think about the tort victims for a moment, and let's
19 pretend we have this case without a large population of tort
20 victims.

21 There might be questions, but there generally isn't a
22 need to be communicating with the collective mass until there's
23 something like a plan or disclosure statement, right? So why
24 would there be any kind of other communications with the
25 universe of creditors out there?

1 MR. LEBLANC: Well, I think, Your Honor, the reason
2 for the motion -- the reason for the 1102 motion and the reason
3 we've retained Epiq is because we -- that's how we interpret
4 the statutory requirements is that we do communicate to --

5 THE COURT: I know, but give me an example of what you
6 would -- what you tell them about. In other words, suppose
7 next month we have -- well, we have a calendar. There's some
8 things on the calendar next month. There's a motion to do
9 this, a motion to do that. Suppose, after that, we get into
10 assumptions or rejections and so on. Are you just going to
11 keep everybody informed of everything?

12 MR. LEBLANC: No, we're not creating work product to
13 post to this website with respect to those sort of ordinary,
14 every course -- everyday motions. That would be -- that would
15 be covered by a docket -- the docket entries that would be --

16 THE COURT: Right.

17 MR. LEBLANC: -- available through -- by clicking
18 through that website. That's --

19 THE COURT: And if there's a plan, then there'll be --

20 MR. LEBLANC: And if there's a plan --

21 THE COURT: -- a notice of statutory --

22 MR. LEBLANC: Yes.

23 THE COURT: -- rules for noticing motions and so on.

24 MR. LEBLANC: And then if we, obviously, in connection
25 with the plan -- we oftentimes will submit a committee letter.

1 That would, obviously, be posted there. There may be other
2 committee communications over time that we want to be -- to
3 have available to people. It's that sort of general
4 requirement.

5 And then, obviously, any time the committee's filing a
6 notion -- I'm sorry, a motion of its own and we have notice
7 requirements, then Epiq would be handling that notice
8 requirement, to the extent that that --

9 THE COURT: But --

10 MR. LEBLANC: -- goes beyond --

11 THE COURT: But then again, give me an example of who
12 you'd be noticing, other than the service list, and the debtor,
13 and the other committees.

14 MR. LEBLANC: If it's just the service list that's
15 done through PACER, then they wouldn't have a role there.

16 THE COURT: I mean, if we made a motion to convert, I
17 guess that gets noticed.

18 MR. LEBLANC: There --

19 THE COURT: But not many thing -- look, I --

20 MR. LEBLANC: Not many things. You're right.

21 THE COURT: Look. I went back and looked at the
22 services to be provided, right, in the seventh -- line 7 of
23 page 5.

24 MR. LEBLANC: Yeah.

25 THE COURT: "Additionally, Epiq will prepare and serve

1 required notices and pleadings on behalf of the committee".

2 And I thought, which ones are they possibly talking about? And
3 the answer is, unless the committee files a plan, which might
4 be a good idea -- I don't know -- there shouldn't be much
5 activity under that category.

6 MR. LEBLANC: We agree, Your Honor.

7 THE COURT: Okay.

8 MR. LEBLANC: It's only where notice is required of a
9 motion that isn't -- and it's not sufficient to do it through
10 the service list and through PACER that they would ever have to
11 do anything. And because they're only paid by the hour,
12 they -- we wouldn't be incurring fees for that.

13 THE COURT: So without pinning you down or asking you
14 to sign a personal guarantee, your representation is that the
15 committee's thinking is this ought to be in the 15,000-dollar
16 range of cost to the estate?

17 MR. LEBLANC: Yes, Your Honor, on a -- I would say
18 that on a steady state -- I don't know if it -- if there may be
19 a little bit of a bump to set up a website. But --

20 THE COURT: I'm not --

21 MR. LEBLANC: Yeah.

22 THE COURT: -- worried about that.

23 MR. LEBLANC: But yes, Your Honor, this is not a --
24 this is not a significant -- in the context of any case,
25 really, and, certainly, in the context of this case --

1 THE COURT: If we have a --

2 MR. LEBLANC: -- we don't anticipate this is --

3 THE COURT: If we have a hearing six months from now
4 on an interim application of a million dollars, I might ask you
5 to --

6 MR. LEBLANC: I would come and --

7 THE COURT: I won't call it a guarantee, but I might
8 ask you to explain yourself.

9 MR. LEBLANC: And I would be here to do so, Your
10 Honor.

11 THE COURT: All right. Anyone want to be heard?
12 Anyone else want to be heard on the motion regarding Epiq?

13 Okay. I'm satisfied with Mr. Leblanc's explanation.
14 It would've been a little helpful to fill in a little bit more
15 of the background so I didn't have to ask about what was this
16 competitive stuff. I didn't need the details, but I've got --
17 I'll take your explanation.

18 I'll grant that motion and look forward to getting the
19 order.

20 MR. LEBLANC: Thank you, Your Honor.

21 THE COURT: So I'll ask the United States Trustee,
22 now, on the two motions of three that are left on the calendar,
23 one for Centerview and one for FTI.

24 Are you satisfied with the explanations for the -- in
25 response to your objections to those two? And if not, then

1 we'll pick -- we'll go to whichever one or both, if you want to
2 be heard on them. Just --

3 MS. VILLACORTA: Sure. We can --

4 THE COURT: -- focus on those questions first.

5 MS. VILLACORTA: Yes. So yeah, the United States
6 would like an opportunity -- United States Trustee would like
7 an opportunity to respond to the statements that were filed by
8 the debtors, the --

9 THE COURT: Well, for both --

10 MS. VILLACORTA: -- committee --

11 THE COURT: For both applications? Oh --

12 MS. VILLACORTA: Well, with respect to the Centerview,
13 I'm not sure if the Court is aware, but they filed a motion
14 under seal --

15 THE COURT: Yeah.

16 MS. VILLACORTA: -- with respect to --

17 THE COURT: You all right? Need a drink or some --

18 MS. VILLACORTA: Yeah, no, no, no. I'm a little sick,
19 so -- sorry.

20 THE COURT: Well --

21 MS. VILLACORTA: With respect to certain
22 confidential --

23 THE COURT: No, they did.

24 MS. VILLACORTA: -- information --

25 THE COURT: And I presume you saw that. I saw it.

1 MS. VILLACORTA: Yeah, I saw that. And so I think at
2 this time, it's kind of premature for the Court to rule on the
3 application and the motion to seal, because we need those
4 disclosures. Those disclosures were requested by our office.
5 And as of right now, Centerview hasn't turned over the
6 information that we've requested.

7 THE COURT: Well, I'm confused. The motion to seal
8 was filed with redactions. And once it's -- and then I've
9 approved the sealing, I think. I --

10 MS. VILLACORTA: I haven't seen an order approving the
11 sealing.

12 THE COURT: Did we do that order? Oh. Well, that
13 must be a mistake, because the way our procedures work when
14 there is a motion to file under seal --

15 MS. VILLACORTA: Um-hum.

16 THE COURT: -- I -- in chambers, our -- my chambers,
17 not no one else, gets notice that it has been sealed. And then
18 we can't even look at it until some -- IT magic. And then that
19 happened, and I was able to look at it. And so I did see the
20 contents.

21 And I thought -- and perhaps I just was not keeping
22 track of all the various orders coming through the system --
23 that I had signed that order. If I haven't signed it yet, of
24 course, you haven't had a chance to see it. So --

25 MS. VILLACORTA: Right. One, I haven't -- the order

1 hasn't been entered, so we haven't had a chance to see it.

2 THE COURT: So your point is --

3 MS. VILLACORTA: And we haven't received --

4 THE COURT: -- we should --

5 MS. VILLACORTA: -- any of this.

6 THE COURT: -- we should put on hold for that
7 objection?

8 MS. VILLACORTA: Yeah, I think we should --

9 THE COURT: Okay. You --

10 MS. VILLACORTA: -- adjourn this.

11 THE COURT: You are?

12 MR. NEWMAN: Hi. My name is Sam Newman. I'm with the
13 law firm of Gibson, Dunn & Crutcher, and I represent Centerview
14 in connection, solely, with its --

15 THE COURT: Mr. Newman, yes, sir.

16 MR. NEWMAN: -- application. So, Your Honor, I think
17 you're off the -- your chambers has not loaded up an order at
18 this point --

19 THE COURT: Okay.

20 MR. NEWMAN: -- affecting the sealing.

21 THE COURT: Well, we don't. You do.

22 MR. NEWMAN: Well, we --

23 THE COURT: It's your job.

24 MR. NEWMAN: -- provided a -- we provided an order,
25 but we --

1 THE COURT: You have to upload the order.

2 MR. NEWMAN: Okay. So you --

3 THE COURT: If you don't --

4 MR. NEWMAN: You have approved --

5 THE COURT: If you don't upload an order, you don't
6 get the order. I mean, in an emergency case, I'll -- we do our
7 own orders. But typically, you're supposed to upload it.

8 MR. NEWMAN: Okay. And I thought we had done that, so
9 if that's not been done, we will do that.

10 THE COURT: Well, sometimes, and particularly in this
11 case, a lot of people are submitting proposed orders attached
12 to motions and so on. But that's not the same as uploading it
13 into the system.

14 But I've reviewed the request to seal, and that seemed
15 proper to me. And I anticipated that the order would be
16 entered, and that would allow the U.S. Trustee, and I believe
17 the two committees are allowed to see what's sealed. Isn't
18 that your understanding?

19 MR. NEWMAN: That is correct, Your Honor.

20 THE COURT: Yeah, and I and my staff. We're the only
21 ones that look at it.

22 MR. NEWMAN: Well, I'll confirm and make sure that
23 that has been uploaded and distribute that information to the
24 U.S. Trustee.

25 THE COURT: Okay. But she has asked that I defer

1 until that's happened, and I can't fault the U.S. Trustee if
2 she wants to see the information and hasn't seen it yet, so --

3 MR. NEWMAN: No, we --

4 (Alarm sounds)

5 THE COURT: Oh, this is a 10 o'clock thing, happens
6 automatically, right? I hope. Well --

7 UNIDENTIFIED SPEAKER: It is 10, yeah.

8 THE COURT: It's 10 o'clock. Isn't that one right?

9 THE CLERK: But it's usually on Thursday.

10 THE COURT: We'll stipulate that it's Tuesday. Well,
11 I'm not going to panic if no one else in the courtroom is going
12 to panic. Okay.

13 MR. NEWMAN: So I --

14 THE COURT: So Mr. Newman --

15 MR. NEWMAN: I take it Your Honor is inclined to grant
16 the motion to seal. We'll upload an order and make sure that
17 that gets processed. We'll distribute the information that the
18 United States Trustee has requested, under seal, and then
19 continue the application. We were hoping, perhaps, to move it
20 to May 9th, which was --

21 THE COURT: Well, again, I -- for other reasons for
22 one of the other applications, for Lincoln Partner, I said I
23 was going to move that one over. I was not -- I mean, I was
24 going to act on Centerview if necessary, but if it can wait, it
25 can wait. Well, I still raise my own question that I want to

1 talk and hear what everyone's saying about this indemnity
2 question.

3 But we'll continue Centerview until the next hearing
4 date, until the U.S. Trustee's had an opportunity to review.
5 But I would say if the U.S. Trustee is satisfied with the
6 disclosures and is prepared to withdraw the objection, that
7 would be appropriate also.

8 MS. VILLACORTA: Right. We have an open dialogue --

9 THE COURT: Yeah, and maybe --

10 MS. VILLACORTA: -- with them also, so --

11 THE COURT: -- maybe or not. I'm not trying to insist
12 that you withdraw your objection, but maybe -- I mean, I got
13 the information, and I was satisfied on my own that it seemed
14 like Centerview has done what is expected of them. But you,
15 obviously, are entitled to get it.

16 MS. VILLACORTA: Right. And we haven't received the
17 information, so --

18 THE COURT: Okay.

19 MR. NEWMAN: And then, Your Honor, that's -- we
20 understand. We want to give them that information. We just
21 wanted comfort that the sealing order was --

22 THE COURT: No, of course. I --

23 MR. NEWMAN: -- entered. And we'll make sure it
24 gets --

25 THE COURT: I wouldn't want it otherwise. Listen, one

1 of my fears in this case, because we have so many lawyers
2 unfamiliar with our procedure, is they -- any one of them will
3 make the mistake of docketing on the docket the very sealed
4 document that they want sealed. And that happened in the prior
5 PG&E case.

6 MR. NEWMAN: I went and clicked on that thing three
7 times after we --

8 THE COURT: Yeah.

9 MR. NEWMAN: -- sealed it, just to make --

10 THE COURT: Yeah.

11 MR. NEWMAN: -- sure. But I take your fear --

12 THE COURT: Because once the cat's out of the bag,
13 folks, it might be on your Facebook page the next day. So
14 you've got to be very careful. And we have these procedures in
15 place, ideally, so that won't happen. But okay. We'll come
16 back to the Centerview issue in a moment. And --

17 MR. NEWMAN: Yeah, I'll step away, but I'd like to
18 address -- get Your Honor's thoughts on the other --

19 THE COURT: Ms. Villacorta, what about the U.S.
20 Trustee's objection to FTI and its disclosures? Are you --

21 MS. VILLACORTA: We're still moving forward with
22 the --

23 THE COURT: Okay. Well, then --

24 MS. VILLACORTA: -- objection.

25 THE COURT: -- why don't you go ahead and make the

1 argument, because I --

2 MS. VILLACORTA: Okay.

3 THE COURT: -- did review the -- your position on
4 that, and I read the moving papers. And then I'll hear what
5 the other side has to say.

6 MS. VILLACORTA: Okay. Thank you, Your Honor. So,
7 Your Honor, first, FTI is not disinterested. There's no way
8 around this. Prior to the petition date, Compass, an affiliate
9 of FTI, was retained by the debtors to provide, among other
10 things, consulting services in connection with the evaluation
11 of potential damages relating to the 2017 and 2018 Northern
12 California wildfires.

13 Debtors continue to use the services of FTI's
14 affiliate and intend to do so during the Chapter 11 cases.

15 THE COURT: But didn't FTI acknowledge that it'll
16 waive any pre-petition claims?

17 MS. VILLACORTA: I didn't see --

18 THE COURT: Unless I've got my professionals mixed up,
19 I thought FTI specifically, in its papers, said that if it's
20 owed any money pre-petition, it will waive and --

21 MS. VILLACORTA: No, but the issue with respect to
22 disinterestedness is that FTI's affiliate is currently advising
23 the debtors --

24 THE COURT: I know that.

25 MS. VILLACORTA: -- with respect to the --

1 THE COURT: But why does that --

2 MS. VILLACORTA: -- wildfire claims, and then now --

3 THE COURT: But why does that make FTI disinterest --
4 not disinterested?

5 MS. VILLACORTA: Well, because by the same token, now
6 FTI wants to also represent the committee and also -- I mean,
7 in paragraph 4-H of the Star (phonetic) declaration, I mean,
8 it's very -- it's there. It says that the committee -- that
9 the FTI will provide, among other services, assistance in the
10 review of the claim reconciliation and estimation process,
11 including potential exposure from wildfire -- the damage
12 claims.

13 THE COURT: No, I understand the point. In other
14 words, let's break it down into its simple components.

15 FTI, as an entity, wants to be employed by the
16 committee, or the committee wants to employ it as its financial
17 advisor. FTI, through another entity --

18 MS. VILLACORTA: An affiliate of the FTI.

19 THE COURT: Well, I was going to say another entity is
20 engaged by the debtor. You believe that, as an affiliate, that
21 implicates the disinterested rule.

22 MS. VILLACORTA: Yes, I do. And it's because the -- I
23 mean, they're both representing -- I mean, the committee's
24 being represented with respect to the wildfire claims, and the
25 debtors are being represented with respect to the same issue.

1 FTI can't be representing both --

2 THE COURT: Well --

3 MS. VILLACORTA: -- the debtors and --

4 THE COURT: Okay. But --

5 MS. VILLACORTA: -- the committee simultaneously.

6 THE COURT: Again, I'm going to pin you down so we got
7 it right, because if you're right, then FTI's entitled to at
8 least understand -- if I'm going to accept your ruling and
9 disqualify them, they -- FTI is entitled to know what the rules
10 are. So I don't want to conflate conflicting positions with
11 the rather technical rules of being disinterested or not.

12 Now, we know that, for -- and I gave Mr. Leblanc, a
13 moment ago, or someone -- example. If you owned one share of
14 stock of PG&E, you couldn't be disinterested, as a matter --
15 it's just the statute if you're a shareholder. What is it --
16 and that's different from representing an adverse interest or
17 being in a potential conflict.

18 So what I'm asking you to tell me is if we start with
19 the lineup that FTI, as a corporate entity, is proposed advisor
20 to the committee, and another corporate entity within the FTI
21 family, if you will, is engaged by the debtor, what is it that
22 you think is the disqualifier? Is it because it's an affiliate
23 or because of something else?

24 MS. VILLACORTA: Because it's an affiliate. And in
25 fact, this was the same situation that -- this is not new to

1 FTI. In fact, in one of the cases that they cite in their
2 reply, paragraph 9 -- let me -- Midway Games, it's the same
3 exact scenario that was presented.

4 It's true FTI's retention application was ultimately
5 approved. But what FTI fails to disclose is that the order
6 authorizing the committee to retain and employ FTI specifically
7 stated that the debtors' employment of the subsidiary shall
8 terminate.

9 THE COURT: Well, but that's not the case here.

10 MS. VILLACORTA: It's the same case, Your Honor. It's
11 the same facts. I mean, we --

12 THE COURT: No, no. There's nothing that's being
13 terminated. We have --

14 MS. VILLACORTA: Oh, no, no, no. Yeah, exactly. No,
15 they're not being terminated --

16 THE COURT: So if I --

17 MS. VILLACORTA: -- right now. But that --

18 THE COURT: So if --

19 MS. VILLACORTA: -- would be the solution would be to
20 have -- if FTI really wants to represent the committee, that it
21 needs to withdraw its representation from the debtors.

22 THE COURT: Okay. So let's --

23 MS. VILLACORTA: It can't be on both sides.

24 THE COURT: But my question is is it because there are
25 competing sides, or because of the --

1 MS. VILLACORTA: There are competing --

2 THE COURT: -- definition of --

3 MS. VILLACORTA: -- sides.

4 THE COURT: -- affiliate? But again, I'm trying to
5 see is it because of the definition of affiliate or because of
6 the -- well, the perform -- the duties they're performing?

7 MS. VILLACORTA: Well, I think it's both. I think
8 it's the fact that it's an affiliate. There are competing
9 interests. And I'll give you an example. When it comes time
10 to value the claims, the committee may -- they may not be of
11 the -- I'm sorry. The committee may want to value the claims a
12 certain way, and the debtors may want to value the other -- the
13 fire wild (sic) claims in a different way. And so I don't
14 think that FTI should be permitted to both --

15 THE COURT: Again, I'm sorry to keep coming back to
16 it, and I'm going to make sure I understand the issue. If
17 you're not -- even if you're not an affiliate, if you are
18 competing or you have competing positions on something, that
19 might create an adverse interest.

20 But even if you don't have an adverse interest, even
21 if PG&E hired an affiliate of FTI to do something unrelated to
22 the fire damages, and at the same time hired FTI to do
23 financial services, that might disqualify them if they are --
24 if that destroys the disinterestedness because of the
25 definition of affiliate.

1 So that, to me, is the way we have to get there.

2 So --

3 MS. VILLACORTA: Um-hum.

4 THE COURT: -- your view, if I've got it right, and
5 I'm looking at the definition of affiliate, that -- and I've
6 forgotten the actual name, but you know the name of the entity.
7 Your position is that FTI, who is the proposed professional
8 here, has an affiliate who is working for the debtor and
9 therefore cannot be disinterested?

10 MS. VILLACORTA: That's correct, Your Honor.

11 THE COURT: Okay. So are we going to hear from the
12 committee on this, or from --

13 UNIDENTIFIED SPEAKER: Yeah.

14 THE COURT: -- representative from FTI?

15 UNIDENTIFIED SPEAKER: I think both.

16 THE COURT: Okay. Mr. Dunne?

17 MR. DUNNE: Good morning, Your Honor. Dennis Dunne
18 from Milbank, on behalf of the committee. Just let me note at
19 the outset that FTI is separately represented by Rick
20 Chesley --

21 THE COURT: Right.

22 MR. DUNNE: -- of the DLA firm. He's present in court
23 this morning, and --

24 THE COURT: Yeah, and I read his reply brief.

25 MR. DUNNE: -- and will speak out after I do.

1 So let me just address the U.S. Trustee's objection.
2 And I think it comes down to the fact that we have -- we can't
3 lose sight of the fact -- and I think Your Honor hit precisely
4 on it -- Compass is not FTI. Compass is a separate legal
5 entity. Yes, FTI owns Compass. It's a wholly owned
6 subsidiary. But Compass is a separate legal entity, separate
7 personnel, separate physical space.

8 THE COURT: But is it an --

9 MR. DUNNE: None of that --

10 THE COURT: But is it an affiliate for -- as the
11 statute defines it? And the statute is clear. It defines
12 affiliate, just like --

13 MR. DUNNE: I'm --

14 THE COURT: -- a shareholder is a shareholder with one
15 share. So what is it about -- what is it about 101(2) that
16 tells you that Compass is not an affiliate?

17 MR. DUNNE: Well, Compass, clearly, is related to
18 FTI --

19 THE COURT: Right.

20 MR. DUNNE: -- and they own -- and FTI owns the equity
21 interest in whatever form it is --

22 THE COURT: Right.

23 MR. DUNNE: -- of it.

24 THE COURT: Right.

25 MR. DUNNE: And I'm not saying that they're not

1 related or affiliated entities.

2 THE COURT: So but as a statutory term, Compass is an
3 affiliate of FTI?

4 MR. DUNNE: Yes. They're a parent subsidiary, yes.

5 THE COURT: Okay. So does that take FTI out of the
6 disinterested role definition, the definition in the -- from
7 the statute?

8 MR. DUNNE: We believe it does not, Your Honor, for
9 the reasons that I was saying.

10 THE COURT: Well, then, tell me again, because it's
11 one of those things where I've got to figure out what the right
12 answer is. And disinterested tell -- we know specifically what
13 disinterested means, don't we, in the statute? Right? It's at
14 101(14). It means not a creditor or equity security holder.
15 Okay. So that's easy. So FTI is not a stockholder of PG&E --

16 MR. DUNNE: Correct.

17 THE COURT: -- where it would be disqualified.

18 MR. DUNNE: That's an easier one, yes.

19 THE COURT: Right. And hasn't been, within two years,
20 a director or employee. Does not have an interest material
21 adverse to the interest of the estate in any -- or any class of
22 creditors or equity security holders by reason of indirect --
23 excuse me, direct or indirect relationship. Are you saying
24 that it doesn't fit that definition?

25 MR. DUNNE: I'm just pulling it up, Your Honor, here.

1 THE COURT: It's 101(14)(C). And by the way, this is
2 one of those anomalies, I think, if I read the statute
3 correctly. 1103, which is the section that tells us about who
4 can be employed by committees, doesn't reference disinterested.
5 But the statute, the 330, I believe it is, where you get paid,
6 says you have to be disinterested.

7 So you'll notice that 101(3), I don't think, if I read
8 it correctly, does not use the word disinterested. So --

9 MR. DUNNE: Correct.

10 THE COURT: So it says that 1103 -- excuse me, 1103(a)
11 says the committee may employ accountants, attorneys, other
12 agents. So that's who -- FTI is the designated employee that
13 the committee has represented. And then the statute -- but
14 then we go back to 330, and that says who can get paid. I
15 presume FTI would like to get paid for its services. So --

16 MR. DUNNE: You're right, Your Honor. I was about to
17 make the distinction that you did, but I'm assuming that the
18 FTI's counsel would like to know now whether --

19 THE COURT: Of course.

20 MR. DUNNE: -- that is the case when we get to interim
21 fee application time.

22 THE COURT: Yeah. Now, and I may have read the wrong
23 section. I've been through this a couple times before, just to
24 make sure we're clear on it. And maybe I've got the wrong
25 section, but let me just double-check that.

1 So 330 talks about compensation. And that talks about
2 who can be compensated, and that includes a professional
3 employed under 1103. So then you go to limitations. And I
4 believe that -- yeah, I think it's 328(c) that says that
5 someone who's not disinterested can't get paid.

6 So I mean, I think that if I'm correct or the U.S.
7 Trustee is correct, because I didn't raise this on my own, but
8 now that I think about it, if FTI is not disinterested, it can
9 be employed but it can't get paid, if you read the statute
10 correctly.

11 MR. DUNNE: Because of the differences for committee
12 retention of professionals, then the debtor, under 1103 -- and
13 you're right -- you're right, Your Honor, is that you could
14 authorize the retention, and they could find out later on that
15 you decide under 327(c) or otherwise that they're not
16 disinterested and can't get paid, which is why this is an issue
17 for today, unless they tell me otherwise.

18 THE COURT: No, the question's an issue for --

19 MR. DUNNE: Yeah.

20 THE COURT: -- today. And the last thing in the world
21 I want any professional of any size to get a "gotcha", to be
22 trapped. You got a right to get out if you're going to get
23 disqualified.

24 But I think it -- and it's one of those anomalies
25 where you've got to read two different statutes, because for

1 representation of trustees, or debtors in possession, or -- in
2 Chapter 7 or Chapter 11, you go to 327 for employment and 330
3 and 328 for compensation. And so if we had a simple case and
4 the trustee said, I want to hire so-and-so to be my lawyer, and
5 it turned out so-and-so was a shareholder of the debtor, that
6 would be an automatic disqualifier, and you couldn't do
7 anything about it.

8 But because this is a committee and we have to go to
9 1103 to find out who can be hired, FTI is eligible to be hired
10 but maybe not eligible to be paid, unless there's a
11 misunderstanding of the way the statute works. And maybe we
12 need to let FTI's lawyer speak to the issue. I don't know. I
13 mean, this gets -- this goes back to my point about does the
14 relationship of FTI, on the one hand, and its corporate
15 subsidiary Compass, does that itself create the affiliate
16 relationship that creates the disinterested relationship?

17 If the answer is yes, and FTI is not disinterested,
18 it's out of luck in terms of getting paid. Nothing I can do
19 about it.

20 MR. DUNNE: Your Honor, let me take -- let me explain
21 why we think that they are disinterested, which is we don't
22 think that in 101(14)(C) that they've actually crossed the line
23 in terms of a material adverse interest.

24 And let me just spend one minute on the scope of
25 services of FTI and then what Compass is doing. Obviously,

1 FTI --

2 THE COURT: No, I am. I've got it. I mean, well, you
3 can go ahead and say --

4 MR. DUNNE: Right.

5 THE COURT: -- if you want.

6 MR. DUNNE: Yeah, I mean, FTI is a broader panoply of
7 services, and you've seen their work --

8 THE COURT: No, I know.

9 MR. DUNNE: -- in the stip and other things.

10 THE COURT: Yeah, I've seen FTI in other cases. I
11 mean, FTI has been a player in this court a lot. I know.

12 MR. DUNNE: Right.

13 THE COURT: I know it.

14 MR. DUNNE: And so the one -- and what Compass does,
15 primarily, as I understand it, will be, potentially, some work
16 for the debtors, relating to estimation of claims associated
17 with the wildfires.

18 THE COURT: Well, but it does -- it's hard to know, to
19 assume that FTI would not somehow get involved in that. But
20 let's assume. I mean, we know what Compass's role --

21 MR. DUNNE: I'm saying we're not adverse on that. I'm
22 saying we're aligned with the debtors on that. We're not the
23 tort committee on that.

24 THE COURT: Okay. Fair enough. Well, again, that's a
25 little squishy, but that -- we know what Compass is engaged to

1 do. And as I say, I don't think there's any flexibility about
2 adverse interest if the disinterested itself is a separate
3 disqualifier. But maybe I'm incorrect on that.

4 Oh, go ahead.

5 MR. DUNNE: Yeah, no, I -- the point that was saying
6 is that it -- they may be working together on aspects of the
7 estimation of various claims. They may arrive at two different
8 scenarios. But they're not the claims of the parties that we
9 represent. There may be that you will get testimony from
10 Compass on some day with respect to what they think the
11 aggregate wildfire claims are. And you may get testimony,
12 potentially, from FTI.

13 But they're not the people we're representing, in
14 terms of the adversity. We're not representing those claims in
15 terms of driving value to them as if we're across the V in a
16 complaint. We will be with the debtors, trying to figure out,
17 based on the data, where this should land in terms of those
18 claims. And hopefully, there's no disagreement. But if --

19 THE COURT: But what if the tort committee takes a
20 contrary view? How do you know what side you're going to end
21 up on? Your committee doesn't -- I mean, how can we know today
22 what side you might be on? I mean, FTI might give your
23 committee advice as to what it thinks is the proper analysis.
24 But you're telling me that it's possible that that advice might
25 be consistent with what Compass is giving the company advice

1 on, but it might be inconsistent.

2 MR. DUNNE: Sure.

3 THE COURT: How do we know?

4 MR. DUNNE: No, I agree. All I'm saying, Your Honor,
5 is that, to the point you said, we actually don't represent or
6 have fiduciary duties to the tort claimants, because they have
7 their own --

8 THE COURT: I know.

9 MR. DUNNE: -- fiduciary.

10 THE COURT: I got it.

11 MR. DUNNE: What we're trying to do is just call balls
12 and strikes, based on the data. It may be that we land one
13 place or the other. But it's not the linked kind of economic
14 interest that we're talking about in terms of adversity.

15 THE COURT: But what if there's a bunch of contract
16 rejections, and the debtor is facing a bunch of claims from
17 rejected counterparties? Who's going to advise and take a
18 position --

19 MR. DUNNE: My understanding is I think the -- well,
20 I --

21 THE COURT: Well --

22 MR. DUNNE: -- I believe Compass isn't -- doesn't do
23 that work.

24 THE COURT: No, no, no. I'm asking from the committee
25 point of view. So I'm not -- I didn't ask about --

1 MR. DUNNE: Okay.

2 THE COURT: -- Compass's work because if the debtor
3 decides to reject -- and we all know it's not going to -- there
4 could be significant rejection damages. We know that from the
5 FERC litigation. Hasn't happened and maybe it won't happen.
6 But suppose there are significant breach claims. It would seem
7 to me that FTI and your committee would want to know what the
8 right number of that is.

9 And so which side are you on? Are you on the side of
10 the population of claimants or on the side of the debtor? I
11 don't know, and I don't need you to answer. It's just a
12 potential for tension, isn't it? In other words, you can't
13 make the problem go away by saying the tort claimants have
14 their own counsel. The counterparty rejectees are not tort
15 claimants.

16 MR. DUNNE: I agree. What I was saying is that the
17 genesis of what we're debating is the relationship on the
18 debtors' side relates, I believe, solely to the wildfire
19 claimant.

20 THE COURT: Right.

21 MR. DUNNE: And your hypothetical about let's assume
22 there's PPAs that get rejected, potentially, Your Honor, let's
23 hope not. But if they do, yes, FTI would be analyzing what we
24 think the appropriate size of those rejection contract --

25 THE COURT: But my point is that FTI's position and

1 the committee's position may be adverse to the debtor and its
2 advisor's position in that area.

3 MR. DUNNE: Not with respect to the advisor who is
4 creating the potential adversity. It depends how broad you
5 want to get on the adversity. I'm saying Compass will never be
6 involved in that analysis, is my understanding.

7 THE COURT: Okay. But again, I -- let's hear from
8 Compass -- I mean, FTI's counsel --

9 MR. DUNNE: Sure.

10 THE COURT: -- to see whether he agrees with this
11 statutory interpretation, because, as I say, my own experience
12 is certain of the disqualifiers are unforgiving and immutable,
13 and some of them are more juicy and flexible. So --

14 MR. CHESLEY: Thank you, Your Honor. Richard Chesley,
15 DLA Piper. Appreciate the Court entering my order to appear
16 pro hac vice.

17 THE COURT: Sure.

18 MR. CHESLEY: It's good to be back in front of Your
19 Honor today.

20 If I could, let me try to untangle some of the issues
21 the Court has appropriately raised, and hopefully, these will
22 address some of the Court's concerns before turning to some of
23 the other questions the Court had raised in its notice of two
24 days ago.

25 First of all, with respect to the 1103(b) standards

1 for the retention of committee professionals, the law is clear
2 that the standards in 1103(b) are far less stringent and
3 exacting than the standards under 327.

4 THE COURT: Agree.

5 MR. CHESLEY: I think we've acknowledged that, Your
6 Honor. And then we get to the issue of compensation, which
7 I'll talk about in a moment.

8 But with respect to those 1103(b) standards, I think
9 it's also important, even if we were to look at the issue of
10 disinterestedness, the phrase "affiliate" does not appear
11 within the definition of disinterested under 101(14). And in
12 looking at these issues, Your Honor -- and I agree that this is
13 somewhat of a complex statutory issue, but we try to look at it
14 from more of a pragmatic standpoint. And there are a couple of
15 observations I would like to make in that regard.

16 This issue has been dealt with and addressed by courts
17 before. It's been addressed in the Puerto Rico PROMESA matters
18 where FTI is representing the committee, and Compass Lexecon
19 continues to provide litigation consulting services to the
20 putative debtor, the Commonwealth of Puerto Rico.

21 Same thing occurred with respect to the General Growth
22 case, where same cast of entities -- FTI went to court as well.
23 Well familiar with -- and Compass Lexecon doing their work on
24 behalf of the debtors. Again, discreet litigation consulting
25 services.

1 With respect to the Compass Lexecon work in this case,
2 obviously, we've talked about pre-petition matters. On a post-
3 petition basis, Your Honor, Compass Lexecon has not been before
4 the Court to have -- to be engaged on behalf of the debtors, as
5 of yet. So much of what we're talking about here is truly
6 hypothetical.

7 And I appreciate Mr. Dunne's comments as to what may
8 occur, but those issues are in the future. What we're trying
9 to do is, obviously, move forward and continue to assist the
10 committee and the other stakeholders in this case with the work
11 that FTI has been doing.

12 THE COURT: Well, I think what you're heading to is
13 you're telling me that, clearly, under 101(14)(A) and (B), FTI
14 is not in jeopardy. But under 101(14)(C), you're saying
15 they're not in jeopardy either because they don't fit that
16 language.

17 MR. CHESLEY: Correct, Your Honor.

18 THE COURT: And therefore, being an affiliate is not,
19 in and of itself, a disqualifier.

20 MR. CHESLEY: Correct, Your Honor.

21 THE COURT: Okay.

22 MR. CHESLEY: And I would also, Your Honor, turn to --
23 and again, this is in our papers, and I have no intention of
24 repeating what's in there, but --

25 THE COURT: No, you can repeat it. It's important

1 stuff.

2 MR. CHESLEY: It is. It's, obviously, critically
3 important for the committee and critically important for FTI.
4 But a couple of decisions on this that I think are extremely
5 relevant.

6 Judge Gonzalez in Enron, that many people here were
7 involved in, made clear that 101(3)(D) does not disqualify a
8 professional from representing a committee solely because the
9 professional holds an interest adverse to the estate.

10 He went on to note that 1103 does not require a
11 committee professional to cease representing the committee in
12 matters that are unrelated to the bankruptcy, are not adverse
13 to the committee's interest in the bankruptcy, and pre-date the
14 committee's professionals.

15 And then in terms of adverse interest, because it is
16 not defined in the Code, the courts, obviously, have to look at
17 case law. And I think probably the best case that's come out
18 on this description is In re: 3dfx Interactive, which came out
19 from this Court over a decade ago.

20 THE COURT: I am familiar with it.

21 MR. CHESLEY: And the Court noted that adverse
22 interest is defined as to possess or assert any economic
23 interest that would tend to lessen the value of the bankruptcy
24 estate or that would create an actual or potential dispute in
25 which the estate is a rival claimant, or to possess a

1 predisposition under circumstances that render a bias against
2 the estate.

3 In 3dfox, the Court did find, in fact, that the counsel
4 had an adverse interest because, while they wanted to represent
5 the committee, they were also the subject of a recovery action
6 by the trustee. They had a direct economic interest adverse to
7 the committee.

8 What we're talking about here has nothing to do with
9 that, Your Honor. And for that reason, that's why we have set
10 up the protocols that we have set up and used time and time
11 again, both FTI and other professionals, to make sure there is
12 no ability to influence, convey information across these
13 barriers. Compass Lexecon, there's no dispute of this -- is a
14 separate entity -- separate employees, IT systems, email
15 systems --

16 THE COURT: No, I understand. Everybody -- and the
17 U.S. Trustee doesn't contend otherwise.

18 MR. CHESLEY: And no one contests that, Your Honor.
19 And so with respect to trying to come up with a pragmatic way
20 to deal with -- I would agree with the Court -- in the anomaly
21 in the Code, we have set forth these issues. Now, obviously
22 when Compass Lexecon comes before the Court, these issues may
23 come up again; we're not here to do that today.

24 THE COURT: Well, Compass shouldn't come before the
25 Court. It's not an employed professional. I mean, unless the

1 debtor needs to employ them.

2 MR. CHESLEY: And obviously, if the debtor wants to us
3 them, that will be the debtor's prerogative.

4 THE COURT: But for the fact --

5 MR. CHESLEY: But for the purposes of the committee
6 engagement today, we do not -- FTI does not meet any of the
7 thresholds under adversity as defined by this Court over a
8 decade ago. And looking at the logic that came back from Judge
9 Gonzalez and Enron, the same holds true. I think what's
10 important --

11 THE COURT: Hey, listen. I don't need my friend Judge
12 Gonzalez. I mean, to me that's a pure, straight reading of the
13 statute, and it happens all the time. Judges, bankruptcy
14 judges, are authorizing employment of people all the time, and
15 that may have adverse -- or do or don't have adverse interests.
16 It's only when we get these statutory disqualifiers --

17 MR. CHESLEY: Exactly, Your Honor.

18 THE COURT: -- like disinterest.

19 MR. CHESLEY: But again -- and that's why it's not a
20 bright line test. And the courts have made clear, under
21 1103(b), it is not. And of course, the courts also recognized
22 that the party's choice of counsel is entitled --

23 THE COURT: No.

24 MR. CHESLEY: -- to at least a certain level of
25 deference.

1 THE COURT: Not counsel. It's not a choice of
2 counsel.

3 MR. CHESLEY: I'm sorry, Your Honor; of a
4 professional.

5 THE COURT: Right. Well, of course, it is. But it
6 also -- you can use your judgment, but you can't hire somebody
7 who is disqualified.

8 MR. CHESLEY: Absolutely, Your Honor, and that is a
9 standard. But again, with respect to the actual standards that
10 apply, if we're looking at adverse interests and the case law
11 that has developed under that definition, we believe that FTI
12 does not have that adverse interest and has taken painstaking
13 steps to make sure that, again, no one here, no professional
14 here, is concerned about the integrity of FTI.

15 THE COURT: Okay, so --

16 MR. CHESLEY: I mean, it's true -- yes, Your Honor.

17 THE COURT: No, and I'm not concerned about the
18 integrity of FTI. But what happens if there are lots of
19 contract rejections and there becomes a time for the official
20 committee, not the tort committee but the other committee, to
21 deal with some claims estimations? It's not something that FTI
22 would have to be involved with or --

23 MR. CHESLEY: Absolutely.

24 THE COURT: -- alternatively be disqualified?

25 MR. CHESLEY: Well, with respect to claims estimation

1 of contract rejection, that's right in the wheelhouse of what
2 FTI would be assisting with. But there's no adverse interest
3 because --

4 THE COURT: Because Compass isn't doing --

5 MR. CHESLEY: Exactly.

6 THE COURT: -- the same on the other side.

7 MR. CHESLEY: Correct, Your Honor.

8 THE COURT: Somebody else might be.

9 MR. CHESLEY: I would assume one of the other advisors
10 retained by the debtor.

11 THE COURT: Well, I'm assuming if the debtor chooses
12 to reject the contract or a group of contracts, they're going
13 to calculate what the consequences are as part of their
14 business judgment in deciding to reject in the first place.

15 MR. CHESLEY: Correct, Your Honor; that's exactly
16 right. I mean, Compass had a very specific focus on a pre-
17 petition basis relating to methodologies for calculation of
18 claims, of wildlife claims. That was the scope of their pre-
19 petition of retention. To the extent they continued to do that
20 on a post-petition basis, obviously that'll be the debtor's
21 decision to make.

22 But again, with respect to the wall that is in place,
23 the specific focus of what they're doing to cast a broad net in
24 creating an adverse interest solely based upon that and the
25 steps that have been taken here, we think is not what the law

1 counsels.

2 THE COURT: So in summary, you believe that I simply
3 overrule the U.S. Trustee's objections because of what you just
4 said.

5 MR. CHESLEY: Yes. Based upon our papers, Your Honor.
6 And with respect to the other issues the Court did raise in its
7 notice, I'm happy to address those --

8 THE COURT: Well --

9 MR. CHESLEY: -- should the Court wish to.

10 THE COURT: -- there's one big one that everybody
11 knows about, and so you're welcome to try to persuade me
12 otherwise. But it's going to be tough to persuade otherwise.

13 MR. CHESLEY: I assume that would be indemnification,
14 Your Honor.

15 THE COURT: Well, it might be, yes.

16 MR. CHESLEY: Your Honor, we will -- we understand
17 that, Your Honor. With respect to that, I do want to clarify:
18 we will be retained under 330, not 328. Your court noted that
19 and that, and that is appropriate.

20 THE COURT: Yeah, again, there's -- everybody gets
21 confused on these things.

22 MR. CHESLEY: And shame on me, Your Honor.

23 THE COURT: No, it's not shame on you.

24 MR. CHESLEY: I should know better.

25 THE COURT: It's not shame on you. It's not one of

1 these things that creates a lot of confusion. And you start
2 with the terminology, the title of 328.

3 MR. CHESLEY: Is not helpful.

4 THE COURT: It's not helpful, right.

5 MR. CHESLEY: But with respect to the 330 issues, Your
6 Honor, that also picks up a number of these issues. The
7 determination of the reasonableness will obviously deal with
8 issues of potential duplication of effort, which the Court
9 noted. We intend, in our interim fee applications, to
10 specifically address that.

11 THE COURT: I'm not worried about that. You tell me
12 what your -- so you've clarified it, that the 328 is not --

13 MR. CHESLEY: The 330?

14 THE COURT: Your client is prepared to be compensated
15 under 330 and 331. What are you -- are you conceding the point
16 on indemnity or still fighting that?

17 MR. CHESLEY: I'll get to that momentarily, Your
18 Honor.

19 THE COURT: Okay.

20 MR. CHESLEY: I do want to also answer the Court's
21 question with respect to a budget; we will submit budgets on a
22 quarterly basis, as requested.

23 THE COURT: Well, yeah. I don't want you to submit it
24 to me.

25 MR. CHESLEY: No, no.

1 THE COURT: I want the debtor and the committee there
2 to know what --

3 MR. CHESLEY: Correct, Your Honor.

4 THE COURT: -- they're dealing with

5 MR. CHESLEY: We will work with the committee on that.

6 And on indemnification, Your Honor, we read the
7 original notice as the Court saying it would not consider
8 indemnification without a negligence carve-out. We would agree
9 to a negligence carve-out as well, if that would be acceptable
10 to the Court.

11 THE COURT: Well, that's what I said. I mean, the
12 lawyers have to live with it, so if FTI lives with it --

13 MR. CHESLEY: We are happy to live with the negligence
14 carve-out, Your Honor.

15 THE COURT: Yeah. So you're going to follow my advice
16 from the prior case, right?

17 MR. CHESLEY: We will.

18 THE COURT: You don't need an indemnity; just don't be
19 negligent.

20 MR. CHESLEY: Your Honor, we will always follow your
21 advice.

22 THE COURT: No, you won't always follow my advice.

23 MR. CHESLEY: Yeah. Do not make mistakes, Your Honor.

24 We --

25 THE COURT: You'll only follow my advice when you

1 agree with it.

2 MR. CHESLEY: This is really to address frivolous
3 claims, and that's really the intent here.

4 THE COURT: Well, I understand. And I don't
5 understand why it's such a big deal with some people, but there
6 are some people in other parts of the country that just think
7 we're all just crazy out here because we don't reward mischief.

8 MR. CHESLEY: We understand, Your Honor.

9 THE COURT: Okay.

10 MR. CHESLEY: But we would agree to a negligence
11 claim.

12 THE COURT: All right. So let's summarize. If I
13 overrule the U.S. Trustee's objections, the engagement for FTI
14 will clarify its compensation provisions. Leave aside how it
15 comes to be engaged, its compensation's under 330 and 331 --

16 MR. CHESLEY: Correct, Your Honor.

17 THE COURT: -- and the language and the agreements
18 will be expanded to exclude from the indemnity, negligence
19 along with willful negligence, gross misconduct

20 MR. CHESLEY: The standard, yes.

21 THE COURT: -- and other bad things. Okay.

22 So Ms. Villacorta, you've heard the argument. What do
23 you want me --

24 MS. VILLACORTA: Yeah, I mean, the Court has already
25 correctly -- oh, sorry. Let me --

1 THE COURT: Well, I'm just asking if you want to be
2 heard anymore.

3 MS. VILLACORTA: Yeah. Just one last thing about it.

4 THE COURT: I'd like to think about it. I think Mr.
5 Chesley's got it right, but I want you to have an opportunity
6 to --

7 MS. VILLACORTA: Well, this issue is, like I said
8 before, this issue isn't new for FTI. In fact, they wanted to
9 do the same thing in Midway Games, and the court did not allow
10 it. And the court only authorized FTI to be retained and
11 employed provided that the debtor's employment of FD/Ashton
12 Partners, a subsidiary of FTI, would terminate.

13 THE COURT: Okay. But which case are you --

14 MS. VILLACORTA: This is Midway Games, and it's cited
15 in paragraph 9 of the debtor's reply.

16 THE COURT: Of the committee's reply, right?

17 MS. VILLACORTA: Of the committee's reply, yeah.

18 THE COURT: Okay. Let me -- but I mean, no. Again,
19 as I said before, I've been reading a lot of different papers,
20 and I can't keep track of them all. So let me just turn to
21 that for a minute.

22 MS. VILLACORTA: Sure. It's docket 1571.

23 THE COURT: Yeah, no, no. I have it. Midway Games;
24 Judge Gross in Delaware. Okay, so what did he hold? Oh,
25 approving FTI's retention as financial advisor to the committee

1 where the subsidiary was also retained by one of the debtors,
2 disclosed. That's not --

3 MS. VILLACORTA: Yeah. And so -- but what the
4 debtor's -- I mean, sorry, I keep on saying "debtors".

5 THE COURT: I'm sorry, they're citing it.

6 MS. VILLACORTA: What FTI fails to state or disclose
7 is that the employment was conditioned on the debtor's
8 employment of the subsidiary to terminate.

9 THE COURT: Okay. But therefore, what? I mean, my
10 point -- one of the nice things about presiding over this case
11 is I read these briefs that tell me what's happened in the last
12 three months all around the country. But maybe they'll hear
13 about what I'm doing.

14 MS. VILLACORTA: And so we're going to --

15 THE COURT: What's correct under the statute? So you
16 heard Mr. Chesley's argument; do you concede, now, that the
17 affiliate relationship is not a disqualifier?

18 MS. VILLACORTA: No, I do not concede to that.

19 THE COURT: Okay. Why is -- again, as I asked you
20 before, to break it into its parts, what is disqualifying about
21 FTI having its affiliate, Compass, working for the debtor?

22 MS. VILLACORTA: Well, Compass is wholly owned --

23 THE COURT: Yes.

24 MS. VILLACORTA: -- by FTI.

25 THE COURT: I know, it's an affiliate.

1 MS. VILLACORTA: FTI has a financial interest.

2 THE COURT: The parent is going to work for the
3 committee; the subsidiary is going to be working for the
4 debtor. Okay. But is that a disqualifier in and of itself or
5 not?

6 MS. VILLACORTA: And even though -- despite the
7 representations made by the committee saying that the debtor's
8 interests and the committee's interests may be aligned, we
9 don't know that.

10 THE COURT: No, no, but come on, answer my question.
11 Everybody agreed -- Mr. Chesley, Mr. Dunne, you, and I all
12 agree that FTI and Compass are affiliates.

13 MS. VILLACORTA: Yes.

14 THE COURT: We also can read the statute to see that
15 the word affiliate doesn't create disinterestedness. That's
16 what the statute doesn't say, right? It doesn't say you're not
17 disinterested if you're an affiliate.

18 So now we go to 1103, and it says who can work for a
19 committee. And it doesn't say -- it says you can't -- it says
20 who can do it. 1103 says that you can represent interests even
21 though you have other relationships, right?

22 MS. VILLACORTA: Right, but then you have to look at
23 328(c) that says that -- this is not an issue that we want to
24 address again at the fee application stage.

25 THE COURT: No, we don't. No. I'm the one that

1 agreed with you that -- let's test it. 328(c) tells us who can
2 get paid. Okay. So along comes a professional who's employed
3 by a committee and says, I'd like to be paid, please. And the
4 question is, all right, you can get paid, but you can't get
5 paid if you're not disinterested. Well, there's nothing that
6 tells us that FTI is not disinterested or represents or holds
7 an interest adverse to the estate with respect to the matter
8 which the professional is employed.

9 Now, how does FTI hold an interest adverse to the
10 interest of the estate in the matter with which it is being
11 employed?

12 MS. VILLACORTA: Well, because FTI is requesting that
13 it be permitted to represent both the committee and the debtors
14 simultaneously.

15 THE COURT: No, it's not.

16 MS. VILLACORTA: And it's simply not permissible.

17 THE COURT: It's not.

18 MS. VILLACORTA: But it is, Your Honor.

19 THE COURT: If we had a motion by the debtor to employ
20 Compass, we might have a different discussion here, but we
21 don't. So to state it again, so we're clear, you believe that
22 FTI could not be paid because its affiliate owns or represents
23 an interest adverse to the interest of the estate. Which one
24 is it?

25 MS. VILLACORTA: I think that FTI is both not

1 disinterested and it has a conflict.

2 THE COURT: Okay, all right. Unless somebody else
3 wants to be heard on this subject, I will just take the matter
4 under advisement and --

5 MR. KAROTKIN: Your Honor, I would like to be heard.

6 THE COURT: -- do something very quickly.

7 Yes, sir. Yes, Mr. Karotkin.

8 MR. KAROTKIN: Stephen Karotkin, Weil, Gotshal &
9 Manges for the debtors. Just so the record is clear, Your
10 Honor, and we did file a brief responsive --

11 THE COURT: Yeah.

12 MR. KAROTKIN: -- pleading.

13 THE COURT: You did.

14 MR. KAROTKIN: I think Mr. Chesley indicated that the
15 debtor's use of Compass is a hypothetical. It's not a
16 hypothetical. We used them pre-petition.

17 THE COURT: No.

18 MR. KAROTKIN: We're using them post-petition.

19 THE COURT: And intend to do so.

20 MR. KAROTKIN: And we intend to do so.

21 As we stated in our reply, we have no objection to the
22 retention of FTI based on the representations that FTI has made
23 as to the separateness of Compass.

24 THE COURT: But I mean, stated differently, you're not
25 challenging the status of FTI as a prospective employed

1 professional the way the U.S. Trustee is doing.

2 MR. KAROTKIN: That is correct.

3 THE COURT: Okay.

4 MR. KAROTKIN: As I said in our response, we have no
5 objection --

6 THE COURT: Right.

7 MR. KAROTKIN: -- so long as it doesn't in any way
8 prejudice our ability to retain and use Compass going forward
9 and not as a basis to disqualify our use of Compass going
10 forward. And we have proposed language to be included in the
11 order to address that.

12 THE COURT: Do you anticipate at all having to come
13 before the Court to seek employment of Compass?

14 MR. KAROTKIN: Yes, we may do so.

15 THE COURT: So we might be visiting this same question
16 on the flip side.

17 MR. KAROTKIN: Well, again, we said and we made it
18 clear to the committee when they interviewed FTI and decided to
19 retain FTI that if this in any way impacts our ability to
20 retain Compass, we would object. We made that clear from the
21 outset. And again, as we said in our pleadings, this cannot in
22 any way affect our ability to retain and use Compass going
23 forward in these cases. They have been doing a lot of work
24 with respect to the wildfire claims.

25 We don't believe there's a disabling conflict on the

1 part of FTI. But it has to be clear, Your Honor, that if FTI's
2 retained, it will not impact our ability to continue --

3 THE COURT: Okay.

4 MR. KAROTKIN: -- to retain Compass.

5 THE COURT: So help me -- let's assume that I agree
6 with Mr. Chesley's argument and Mr. Dunne's, and I overrule the
7 U.S. Trustee and sign an order for FTI. And then next month
8 you come in and ask to employee Compass and there's an
9 objection; what do I do?

10 MR. KAROTKIN: We've asked that you would --

11 THE COURT: I mean, do I say FTI's out? I mean, what
12 do I do? Excuse me. What do I do if I'm forced to the
13 analysis that somehow Compass is disqualified at that point?

14 MR. KAROTKIN: Well, I think you've already done that
15 analysis with respect to its relationship with FTI, and that's
16 why we've asked for that particular language to be included in
17 the order.

18 THE COURT: Well, but don't you think that the
19 difficulty here is that I'm being asked to authorize the
20 employment of FTI under 1103; I would be being asked to
21 authorize the employment of Compass under 327, and it's a
22 different test. I mean, I don't -- the last thing in the world
23 I want, I said it before, I don't want to be playing games with
24 professionals and saying you're in, but then you're out. But I
25 don't know how I get to that point.

1 MR. KAROTKIN: But Your Honor, you're again addressing
2 the disinterested issue.

3 THE COURT: Right.

4 MR. KAROTKIN: It can't be different. It can't be
5 different with respect to Compass than it is with FTI, that
6 analysis.

7 THE COURT: Well --

8 MR. KAROTKIN: It's based on the fact --

9 THE COURT: But the statute might make it different.

10 MR. KAROTKIN: I don't think so.

11 THE COURT: No?

12 MR. KAROTKIN: But again, we made it clear from the
13 outset to the committee and to FTI that if this in any way
14 impacts our ability to use and retain Compass going forward,
15 then we would have an objection.

16 THE COURT: Yeah. No, I understand your point.

17 MR. KAROTKIN: And we can't be put in a position, Your
18 Honor, of coming back here when we retain Compass, and Compass
19 is disqualified because FTI was retained.

20 THE COURT: Right.

21 MR. KAROTKIN: That's not fair.

22 THE COURT: Again, you and I can have a debate about
23 the difference between employment and compensation, but the
24 fact is they are important. But the truth is that 327 talks
25 about who can be hired, and 328 talks about who can be paid.

1 And so if you made a motion to authorize the employment of
2 Compass, you would have to persuade me, and you would have to
3 carry the prima facie burden to show, that Compass is not
4 disinterested.

5 MR. KAROTKIN: And what I'm saying, Your Honor, is by
6 reason of FTI's retention today, if you were to grant that,
7 today or whenever you decided to retain them, we cannot have
8 that as a disabling factor.

9 THE COURT: No, I --

10 MR. KAROTKIN: And if that were a disabling factor,
11 then we would object to FTI's retention.

12 THE COURT: No, I agree with you. It sounds like you
13 think I'm fighting you on this; I'm not. I'm agreeing with the
14 problem and trying to see if there's a way to --

15 MR. KAROTKIN: Well, I think what we've included in
16 our order, in our language for the proposed order would address
17 it. And I think it's consistent with what you were saying
18 today.

19 THE COURT: Let me go back and find that order. I did
20 have it out here on paper. No, that's not it. Okay.

21 So the proposed order says: "The employment of FTI
22 shall in no way impact or restrict or preclude in any way
23 debtors from employing and retaining Lexecon." And then:
24 "FTI's retention by the committee may not be used as a basis to
25 disqualify or limit Compass." Well, the question is: by whom?

1 By U.S. Trustee? By me? By some other party? I don't know
2 the answer to that.

3 MR. KAROTKIN: But --

4 THE COURT: Mr. -- wait, either one.

5 MR. CHESLEY: Your Honor, I was just going to --

6 THE COURT: You can both stay; both of you stay there.

7 MR. CHESLEY: Yeah. Well, what I was just going to
8 say, Your Honor, is this is really the same situation that was
9 addressed in the Puerto Rico PROMESA matter as well as in
10 General Growth, where we had the same -- in effect, same
11 lineup, same --

12 THE COURT: Right, right.

13 MR. CHESLEY: -- process. And the courts were able to
14 effectively navigate that, based upon the same rationale Mr.
15 Karotkin has indicated. So again, we believe there is
16 similarity. Again, that's why we have the processes in place
17 to separate these out as we work together.

18 THE COURT: Well, I think the walls are fine. And no
19 one -- the U.S. Trustee hasn't questioned the wall issue. The
20 wall issue is a wall to avoid the overlap and the risk; it
21 doesn't change the relationships. It doesn't make an affiliate
22 not an affiliate, and it doesn't make a shareholder not a
23 shareholder. So it's a safeguard, and it's done in lots of
24 contexts, but it may not solve the statutory problem.

25 MR. CHESLEY: Your Honor --

1 THE COURT: That's -- I just don't know.

2 MR. CHESLEY: Yeah, well, there are a couple of cases
3 that we did cite in our memorandum --

4 THE COURT: Well --

5 MR. CHESLEY: -- that, in effect, did use the wall for
6 that, but I don't think we need to get to that point, Your
7 Honor. I think, to Mr. Karotkin's point, Mr. Dunne's point,
8 and ours is with respect to the statutory predicates, again, it
9 is a fact-intensive inquiry. We believe, based upon Mr. Star's
10 declaration, we have set forth the facts that support the
11 retention here. And we don't see any basis why that same
12 factual predicate would not apply when Compass is before the
13 Court.

14 THE COURT: Mr. Karotkin, is there any usefulness in
15 trying to tee up the motion to employ Compass and have it
16 considered and fully vetted together and have these things
17 resolved together?

18 MR. KAROTKIN: We could do that, Your Honor.

19 THE COURT: I mean, I don't like it, but I also don't
20 want the uncertainty.

21 MR. KAROTKIN: Nor do we.

22 THE COURT: Yeah.

23 MR. KAROTKIN: Nor do we. Compass has done a lot of
24 work for us.

25 THE COURT: Yes, I know they have.

1 MR. KAROTKIN: And we can't be in a position where
2 that is lost.

3 THE COURT: And so has FTI. And I really --

4 MR. KAROTKIN: And I'm talking pre-petition as well as
5 post-petition.

6 THE COURT: Right, I know.

7 MR. KAROTKIN: It just cannot be lost.

8 THE COURT: And I'm not envious of the notion of
9 disqualifying either one of them. I raised one issue that, at
10 least from FTI's point of view, is a nonissue. That's my
11 little pet peeve about indemnity. And everything else seems
12 like it's okay, but I didn't fully understand these issues.
13 And I'm struggling with -- well, okay. What if I today
14 overrule the U.S. Trustee and tomorrow sign an order that
15 authorizes FTI to be in there, and then next week you show up
16 for Compass and not I or the U.S. Trustee, somebody else makes
17 a persuasive argument. Obviously none of you, as lawyers for
18 your clients, or your clients, don't need that uncertainty and
19 unpredictability. That's unfair to everybody.

20 So you think that that's something that would be worth
21 doing, to --

22 MR. KAROTKIN: I think that would be worth exploring.
23 My suggestion is that you reserve decision or put this over to
24 the next hearing and then we will consider filing on an
25 expedited basis a motion to retain Compass.

1 THE COURT: Yeah. I mean, as long as you can do it.
2 I mean, I don't know whether that's a better thing. Now, Mr.
3 Dunne, what do you think about this? I mean, again, I've
4 looked at your committee, not -- Mr. Chesley's representing his
5 client, so you've got to represent the bigger picture here,
6 whether you think this is the right way to take it in this way
7 or some other way.

8 MR. DUNNE: Well --

9 THE COURT: I mean, you don't want FTI to get bounced
10 next month, either.

11 MR. DUNNE: I'm going to sound a lot like Mr.
12 Karotkin, which is that FTI's done a lot of work. We'd like --
13 we need them to continue to do that work. And we believe that
14 they've met all the requirements and the statutory predicates
15 for retention. We're fine with the language that Mr. Karotkin
16 proposed to include in the order, and we'd like to eliminate
17 any uncertainty with respect to their retention.

18 THE COURT: But what would I do -- what would I do if
19 he comes back next month with a motion and there's a
20 disqualifier? I mean, I can't just sort of decree in advance
21 that nobody who might object can't be heard. I can't rule on a
22 motion that hasn't been raised yet, right? So I'm just asking
23 you if you think that would be risky or worth taking this --
24 going two steps? And I either have both of them in, or at
25 least we don't run this risk of what to do about what Mr.

1 Karotkin doesn't want to happen with the debtor's situation?

2 MR. DUNNE: Okay. The people are still free to
3 object, Your Honor. And Compass is in a different position
4 vis-a-vis FTI, right? FTI is the parent; Compass is the sub.
5 They're affiliates, but the equity ownership -- what we talked
6 about, your hypothetical is that if FTI owns stock in PG&E that
7 would be one thing; they own stock in Compass. Compass doesn't
8 own stock in FTI.

9 THE COURT: Well, I don't --

10 MR. DUNNE: Right?

11 THE COURT: No, of course it doesn't. And it may well
12 be that there's simply no statutory disqualifier that would
13 taint Compass. But there's no record, there's no way to test
14 that until we test it.

15 In other words -- look, if I were smart enough to
16 anticipate this problem, I might have urged that the Compass
17 motion be brought on now, and we could have this out for good.
18 But I have a problem of wanting to have certainty but
19 recognizing that I can't today create certainty for Compass
20 because their position and the debtor's motion isn't before me.
21 And a form order reads fine; it reads fine to me, too. But it
22 doesn't bind someone who isn't even a participant to it or
23 can't challenge it. So --

24 MR. KAROTKIN: Your Honor, as I said, we cannot be in
25 the position --

1 THE COURT: Yes.

2 MR. KAROTKIN: -- where our retention of Compass is
3 jeopardized by virtue of you --

4 THE COURT: No, I'm with you. I mean, I've heard it
5 three times; I've got it.

6 MR. KAROTKIN: Okay.

7 THE COURT: But that's the point. Just pretend I'm
8 standing here right -- sitting here right now, and I'm saying
9 well, guess what? It looks to me like the debtor is going to
10 lose Compass if the committee employs FTI. I presume your
11 argument would be, then bounce FTI.

12 MR. KAROTKIN: Yes, it is.

13 THE COURT: And the committee's position might be,
14 well, bounce Compass, and I have to decide what to do. But
15 Compass isn't here, I mean, in a legal sense, they're not here
16 to be tested.

17 MR. KAROTKIN: As I said, I think based on that and
18 our position, the best thing to do would be to put this over to
19 the next hearing, and we can discuss it with the committee and
20 decide whether we could file an expedited motion to retain
21 Compass and the issues could be resolved together. I don't
22 think that hurts anybody.

23 THE COURT: Well, it kind of leaves FTI in limbo for a
24 couple weeks. But I mean, even if FTI told me today, they
25 insisted on indemnity and I said, well, then you're out, I

1 wouldn't deny them their compensation between the time they
2 were hired until now. I mean, that's unfair to them, also.

3 So Mr. Chesley, can your client live with that? I
4 mean, it's awkward, but it seems to me that, look, this is what
5 you get for being a worldwide, multifaceted financial advisor.

6 MR. CHESLEY: I mean, I think with the protection,
7 Your Honor, that we would not be economically harmed during
8 this interim period. We obviously want to make this as easy on
9 everybody as possible. We do think, again, these could be
10 dealt with separately, but if the Court wishes to do them
11 jointly --

12 THE COURT: Well, for reasons that were discussed a
13 little bit, I think, before you were in the case, certainly Mr.
14 Karotkin and everyone else from the outset, I think early in
15 one of the first hearings I said, when are we going to get the
16 retention applications because I do feel strongly, and have
17 always felt strongly, about not leaving the professionals out
18 there hanging.

19 And sometimes, obviously, as you know, in simple
20 cases, you do the employments very quickly, sometimes even
21 without a hearing. Here we have lots of professionals, lots of
22 money, lots of visibility, and we're at a three-month mark, and
23 today was the first day I authorized the employment of four law
24 firms that -- and that brings the total to about seven.

25 And the financial advisors are entitled to the same

1 certainty, but I'm not going to say you're out of here for some
2 other reason, and by the way, you forfeited the last three
3 months' worth of fees. That would be unfair and punitive, and
4 I'm not interested in doing that.

5 But because we have this potential of the debtor's own
6 interests being jeopardized by whatever legal consequences of
7 not letting the debtor hire and retain Compass -- and FTI can't
8 be a pawn, either; they've either got to be in or out. So I
9 guess that's the best thing to do.

10 And Mr. Karotkin, that means Compass, or the debtor
11 for Compass, has to jump through all the hoops to show the
12 prima facie case for eligibility so that, for example, if you
13 go back to your office and somebody tells you, by the way, I
14 forgot to tell you; Mr. Compass has a hundred shared of PG&E,
15 you're in trouble. You're out. And so you'd have to make the
16 proper showing to say Compass is an eligible employee and
17 professional under 327, right?

18 MR. KAROTKIN: Yes, sir.

19 THE COURT: Well, it's not my first choice, either,
20 but I --

21 MR. CHESLEY: We understand, Your Honor. But we,
22 again, we agree with Mr. Karotkin; the standards should be the
23 same, or they should line up. The facts should line up, but --

24 THE COURT: Well, I think -- yes, okay, what we'll do
25 is we'll put this over to the next calendar, either the 8th or

1 9th; we'll pick a date in a minute. I think, in the meantime,
2 I'm going to try to see if I can work through and agree with
3 Mr. Chesley, and I think I do. I think I agree with his legal
4 analysis and perhaps disagree with what the U.S. Trustee
5 argued, but I want to just think through those issues and look
6 at the decisions.

7 And none of these decisions, not a single one that
8 anybody's cited, is binding on anybody.

9 MR. CHESLEY: I understand, Your Honor.

10 THE COURT: But all of the judges that decide them are
11 my colleagues and I respect their views. I was actually the
12 mediator in 3dfx; that's a whole nother story. I'll tell you
13 what happened there, bizarrely, but that's for over a beer
14 someday. Okay.

15 So I will -- now, Mr. Karotkin, in thinking of the
16 calendar, we have a few things on for the 8th and a few for the
17 9th. And I'm wondering whether we should move them all to one
18 day just for everyone's convenience.

19 MR. KAROTKIN: That's probably a good idea.

20 THE COURT: Do you have a thought about that? Well,
21 again, I'm concerned about all the travel and all the
22 everything else. Isn't that right, Ms. Perrada (phonetic)? We
23 have two or three things on each of the two days, right?

24 THE CLERK: Five on each day.

25 THE COURT: Five on each day. Well, but the way you

1 were resolving things this week, maybe some of those will go
2 away.

3 MR. KAROTKIN: I think we could do it all in one day.

4 THE COURT: I tell you what, let's --

5 MR. KAROTKIN: Why don't you decide what you want to
6 do?

7 THE COURT: No, no, but I have to switch people
8 around. So those of you that are traveling, you have your own
9 travel plans. But I mean, some of the other people --

10 Well, let's do it on the second day, which is the 9th,
11 right? And what I'll do is we'll send out a notice, or perhaps
12 Ms. Kim or someone from your side, Mr. Karotkin, can work with
13 my staff and we'll make sure that everything that's set for the
14 8th just gets moved over to the 9th.

15 And we'll anticipate having a motion by the debtors to
16 employ Compass on the 9th, and -- I'll tell you what. You
17 figure out when you need to do it and talk to the U.S. Trustee.
18 And then submit an order shortening time that's consistent with
19 that.

20 MR. KAROTKIN: Okay.

21 THE COURT: I'll take your representation that you're
22 going to put this high on the list of priorities. We'll
23 continue Compass and -- I'm sorry, FTI to that date. We're
24 going to continue Centerview anyway because of the issue on the
25 confidentiality. And I previously indicated a willingness, or

1 desire, to continue Lincoln.

2 Let me switch gears and ask Mr. Dunne, unless you know
3 already, do I need to call on counsel for both Lincoln and
4 Centerview if they like FTI or are going to accept my position
5 on the indemnity provision?

6 MR. DUNNE: I think you do have to call on
7 Centerview's counsel.

8 MR. CHESLEY: Your Honor, before you do that, if I
9 may, just one --

10 THE COURT: Yes.

11 MR. CHESLEY: -- point. With respect to the arguments
12 today, should we be prepared to address anything new or we wait
13 for further notice from the Court?

14 THE COURT: Well, I think if I have time, and I should
15 have time, I will attempt to just gather my thoughts and the
16 arguments of all of you and perhaps issue something, sort of a
17 tentative decision on it before the hearing so you can know.

18 MR. CHESLEY: Thank you, Your Honor. If the Court --

19 THE COURT: Or maybe even -- I mean, I don't want to
20 make it a final decision because of the Compass situation, but
21 certainly I can -- let's try. If for some reason I am
22 persuaded that FTI simply can't be allowed to serve as long as
23 Compass has a role, I guess that kind of answers the question.
24 But if I accept that FTI is not disqualified, tentatively, then
25 we'd be subject to getting the Compass thing resolved.

1 MR. CHESLEY: Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. CHESLEY: If the Court does require any additional
4 briefing or information, I'm happy to provide it.

5 THE COURT: Yeah, I don't think so. The briefing's
6 fine.

7 MR. CHESLEY: Thank you, Your honor.

8 THE COURT: Okay. So are you here for Centerview?

9 MR. ROSE: Your Honor, no. Just for the tort
10 claimants' committee.

11 THE COURT: Oh.

12 MR. ROSE: But your question about Lincoln, I think
13 we'll be able to talk to Lincoln, and I think it would be
14 acceptable, but I'll confirm prior to the 9th.

15 THE COURT: On the indemnity.

16 MR. ROSE: Yeah, on the indemnity, Your Honor.

17 THE COURT: Yeah, okay. And then I presume you're
18 aware that I wanted to hear from the tort committee on why it
19 needs Lincoln and DSI.

20 MR. ROSE: Correct, Your Honor.

21 THE COURT: And maybe there's a perfectly good
22 explanation, but that's what I want to hear.

23 MR. ROSE: Yes, Your Honor. We intend to.

24 THE COURT: And who's here for the tort committee
25 today? I can't see who's here.

1 MR. DUNNE: For the tort committee?

2 THE COURT: The tort committee.

3 MR. ROSE: Your honor, Jorian Rose from
4 BakerHostetler.

5 THE COURT: Okay, sorry.

6 MR. ROSE: Yeah.

7 THE COURT: So you need to be prepared to tell us --
8 tell me, the issue of why you need both of those retentions.

9 MR. ROSE: With the Court's permission, perhaps we
10 could file a short supplement --

11 THE COURT: Yeah.

12 MR. ROSE: -- ahead of time.

13 THE COURT: That's fine.

14 MR. ROSE: Thank you, Your Honor.

15 THE COURT: Okay. And Centerview.

16 MR. NEWMAN: Thank you, Your Honor. Sam Newman --

17 THE COURT: Mr. Newman.

18 MR. NEWMAN: -- Gibson, Dunn for Centerview.

19 THE COURT: Yes.

20 MR. NEWMAN: We'll talk to our clients about the
21 proposal. Just so I understand it, I think you were --
22 proposed to approve an indemnity provision, but without the
23 negligence --

24 THE COURT: Yeah.

25 MR. NEWMAN: -- without it covering negligence.

1 THE COURT: I mean, that's just been a thing for a
2 long time, obviously. But I'm not going to rule -- if your
3 client accepts that, then I'm not a problem (sic).

4 Well, I do have the question of the budget, I think.
5 Or no, I had the questions for you about the extra bonus. I
6 mean, your client's engagement is under 328.

7 MR. NEWMAN: So let me just --

8 THE COURT: Right?

9 MR. NEWMAN: Yes, you're absolutely right, Your Honor.

10 THE COURT: Okay.

11 MR. NEWMAN: I can go through the comments Your Honor
12 made quickly --

13 THE COURT: Okay.

14 MR. NEWMAN: -- just to kind of keep it all together.
15 The first was the question about information regarding hourly
16 rates and time spent to prove out or support the 250,000
17 dollars monthly. And I think my client will be prepared to
18 include language in the order that confirms that they will
19 provide that data to the debtors on a regular basis.

20 THE COURT: But will they provide it as far as
21 something that the U.S. Trustee and I and everybody else can
22 see?

23 MR. NEWMAN: Yes, Your Honor.

24 THE COURT: I mean, like interim applications, right?

25 MR. NEWMAN: Yes, with the exception, and we'll get to

1 that in a second, that -- and again, understanding Your Honor's
2 not --

3 THE COURT: I'm willing to --

4 MR. NEWMAN: -- ruling today.

5 THE COURT: -- give you the half an hour increment.

6 Investment bankers bill in minimal increments of month, right?

7 MR. NEWMAN: I think this goes to the 328 issue, which
8 let me grab in a second. I think the question you asked about
9 the additional fee, I just want to comfort Your Honor --

10 THE COURT: Right.

11 MR. NEWMAN: -- nothing has been agreed to today. The
12 order, as we've discussed with the United States Trustee will
13 include a provision that makes clear that any additional fee
14 will be subject to further notice and hearing.

15 So if -- the only reason we're flagging that is I
16 think the parties have agreed, Centerview and the committee,
17 that it may be appropriate to award additional compensation.
18 But that will only be done if --

19 THE COURT: Well, I agree, it may be.

20 MR. NEWMAN: But that will only be done if --

21 THE COURT: I agree, it may be. But it sounded -- I
22 was, frankly, surprised that the debtor didn't say anything
23 about this. It sounded to me like the debtors' bank account
24 was going to be open at the whim of the committee -- the tort
25 committee deciding how much you should get paid. I mean -- I'm

1 sorry --

2 MR. NEWMAN: Never the intention.

3 THE COURT: -- the -- I'm sorry not the tort
4 committee. The general committee.

5 But that's the way it reads. Because it said when the
6 official committee says what it -- it allows us the additional
7 fee, you'll get it and the debtor has to pay it. Like,
8 that's --

9 MR. NEWMAN: No, you're absolutely right. The United
10 States Trustee made that comment, and we have proposed language
11 I think they find acceptable to clarify that. And the final
12 order would have such language to make that clear.

13 THE COURT: Well, let's do this. I've been around
14 long enough to know that lawyers know when to get the message
15 and when they want to fight it. And I'm hearing from one
16 lawyer for one of the professionals today that they accept my
17 take on the indemnity issue.

18 Two other lawyers for two of them have said they'll
19 talk to their clients. There's a strong signal here, folks,
20 that you're in for sure with me if you accept that. If you
21 don't, you might not get your employment approved.

22 But I will continue for Centerview so the U.S. Trustee
23 has an opportunity to be heard on the confidential issues on
24 the sealed information and that a form of order that's
25 acceptable to the U.S. Trustee and also to the committee, and

1 the debtor will be available when and if we get to that point
2 on the sealed information.

3 I am generally satisfied with what the sealed
4 information revealed and what the explanations for why
5 Centerview wanted to do it the way they did. But I'm going to
6 let the U.S. Trustee be heard on that.

7 And as far as Lincoln's concerned, it should be --
8 it's consistent with everything we talked about. If Lincoln
9 goes along with the indemnity, I don't know anyone else raised
10 any other objections that I'm aware of.

11 Yes?

12 MR. NEWMAN: The only other item Your Honor raised was
13 with respect to the 328 application --

14 THE COURT: Right.

15 MR. NEWMAN: -- which is the way Centerview intends to
16 be employed --

17 THE COURT: Right.

18 MR. NEWMAN: -- question of retaining for parties
19 other than the United States Trustee a review for
20 reasonableness.

21 THE COURT: Right.

22 MR. NEWMAN: At which -- which is -- just to be clear
23 and would take Your Honor's further thoughts -- but that is how
24 we intend to proceed, obviously, if they --

25 THE COURT: So what's the Court's function? What's

1 the Court's function then? Nothing? I just -- I mean,
2 what's --

3 MR. NEWMAN: No --

4 THE COURT: -- what's the U.S. Trustee's function?

5 MR. NEWMAN: So the Court and U.S. Trustee and other
6 parties would be -- and we could brief this further if Your
7 Honor's inclined, but 328(a) would provide for retention on a
8 monthly or contingency fee basis subject only to a heightened
9 standard of review, provided for under 328(a) in the statute.

10 And that's what are intention was. The U.S. Trustee
11 who specifically objected and requested a heightened level of
12 review for themselves, we're prepared to accommodate. But that
13 would not be the expectation for all parties. We would expect
14 that any party that did not want us retained under 328(a) would
15 object now, and that would be resolved now because, honestly,
16 the standard of review is different, right. A 327 --

17 THE COURT: Well --

18 MR. NEWMAN: -- application would --

19 THE COURT: Well, I -- I mean --

20 MR. NEWMAN: -- be reviewed for reasonableness.

21 THE COURT: I mean, is it even a standard of review
22 under 328?

23 MR. NEWMAN: Well --

24 THE COURT: It'd be -- the statute has this -- that's
25 convoluted language about unanticipated circumstances. And so

1 to me, a traditional 328 is, for example, a personal injury
2 lawyer where the trustee hires a lawyer to go sue for personal
3 injury and recover a one-third contingency. And if the lawyer
4 makes one phone call and gets a five-million-dollar fee, some
5 courts will say, we can go back and revisit that. But other
6 courts will say, no, you can't. Right?

7 MR. NEWMAN: And I think that logic applies to monthly
8 and/or fixed fee arrangements because the whole point of those
9 arrangements are that it's not necessarily ascertainable in
10 advance how much effort is going to be required --

11 THE COURT: Right.

12 MR. NEWMAN: -- on a month-to-month basis.

13 THE COURT: Okay. That's --

14 MR. NEWMAN: If we have to work harder -- we're not
15 going to ask for more money if we don't work as hard.

16 THE COURT: Okay. But suppose Centerview goes forward
17 and makes a substantial contribution and comes in and says, I'd
18 like my twelve million dollars, please. You seem to be
19 conceding that the U.S. Trustee can be heard on it.

20 MR. NEWMAN: They have requested that right and we
21 have agreed to accommodate them.

22 THE COURT: How about the Court?

23 MR. NEWMAN: Well, the Court, obviously, would hear
24 the objection of the U.S. Trustee.

25 THE COURT: No, how about the Court on its own

1 deciding? Do you think the Court is precluded from revisiting
2 that?

3 MR. NEWMAN: Well, we would ask, Your Honor, to rule.
4 And again, we're not asking Your Honor to rule today. And
5 again, if supplemental briefing would be helpful, we would ask
6 the Court to rule that it believes that the 328(a) standard is
7 appropriate for this engagement under the statute.

8 THE COURT: Well, I think that's the rub on when does
9 328 operate. It says that if current terms and conditions
10 prove to have been improvident in light of developments and not
11 capable of being anticipated at the time of fixing of the
12 terms. How could you possibly prove advance approval of that
13 if it's circumstances that were not anticipated at the time of
14 the fixing. That's the way the statute reads.

15 MR. NEWMAN: Right. Well --

16 THE COURT: It's bad grammar.

17 MR. NEWMAN: -- I think the statute --

18 THE COURT: It's bad grammar, but it gets the message
19 across.

20 MR. NEWMAN: What the statute says is when we file our
21 final fee application, the Court may allow other compensation
22 if the Court believes that conditions prove to have been --

23 THE COURT: Right.

24 MR. NEWMAN: -- improvident --

25 THE COURT: Right.

1 MR. NEWMAN: -- in light of developments.

2 THE COURT: So -- so --

3 MR. NEWMAN: It's not just -- to be clear, it's not a
4 review "for reasonableness" --

5 THE COURT: No, that's right.

6 MR. NEWMAN: -- which is 327.

7 THE COURT: That's right. It's not. No, it's not
8 327. It's 330.

9 MR. NEWMAN: Sorry, Your Honor. Yes.

10 THE COURT: So again, these are why these three
11 statutes --

12 MR. NEWMAN: Well, three --

13 THE COURT: -- are all mixed. But let's go back
14 again. If I -- leave aside all the other stuff. If I say to
15 you today, congratulations; your client is hired. You're in
16 the game. You now have a twelve-million-dollar potential
17 recovery out there. And then six months later we have a final
18 hearing and you come in and say, I'd like my twelve million
19 dollars. Don't you think the only way one could revisit that
20 twelve million is if that last sentence is operative, if there
21 were conditions -- terms and conditions were improvident in
22 light of developments not capable of being anticipated?

23 MR. NEWMAN: I believe you're right. If Your Honor --

24 THE COURT: That would be the standard.

25 MR. NEWMAN: -- enters the order under 328, that is

1 the -- the Court still has the right to review the compensation
2 under that standard.

3 THE COURT: But under those terms.

4 MR. NEWMAN: Under that standard.

5 THE COURT: And I believe the Ninth Circuit -- I've
6 forgotten the case. I thought it was Circle K, but maybe it
7 was something else -- they say you've got to be very firm.
8 You've got to put the word out there in advance. This is the
9 rule. This is -- you're going to get paid under 328. You got
10 to get employed, and everybody's got to know what the rules
11 are.

12 MR. NEWMAN: I think that's --

13 THE COURT: Right?

14 MR. NEWMAN: -- why I'm belaboring the point, Your
15 Honor.

16 THE COURT: Yeah, but why -- then why does the U.S.
17 Trustee get to come back in and have a shot under 330?

18 MR. NEWMAN: That is an accommodation that we have
19 been willing to make to the U.S. Trustee under this order
20 specifically because of their request. That's the reason.

21 THE COURT: Then you'd better go make nice to the U.S.
22 Trustee so they go along with the confidential disclosures so
23 your client can be in the game.

24 MR. NEWMAN: Thank you, Your Honor.

25 THE COURT: All right. So I will then continue

1 Centerview, FTI, and Lincoln to May 9th at 9:30 for accounting
2 purposes, and the matters that are on our May 8th calendar will
3 be moved over to that same day, 9th; we're just going to
4 consolidate it so as to try to cut down on any unnecessary
5 travel or delays for counsel. I will, therefore, not be
6 issuing orders on the three professions that we've talked about
7 today.

8 And I will, however, issue something in the nature of
9 a tentative ruling on the FTI matter. And I will then get
10 final orders on the other employments and the protocol order
11 that we talked about today.

12 Have we covered all the bases?

13 MR. NEWMAN: Thank you, Your Honor.

14 THE COURT: All right. Thank you for your time,
15 everyone.

16 IN UNISON: Thank you, Your Honor.

17 THE COURT: See you next time around.

18 (Whereupon these proceedings were concluded at 11:09 AM)
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I N D E X

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C E R T I F I C A T I O N

I, Dena Farbman, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ DENA FARBMAN, CET-629

eScribers

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Phoenix, AZ 85020

Date: April 25, 2019

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